



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

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

**A. CALL TO ORDER**

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

**B. ANNOUNCEMENTS/PRESENTATIONS**

1. Next Board Meeting: Wednesday, February 5, 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 E11, Action on Consent Calendar.

- |  |    |
|--|----|
| 1. Approve Board Minutes – December 4, 2013  | 6  |
| 2. Receive and File Executive Committee Minutes – November 1, 2013   | 12 |
| 3. Receive and File Plans and Programs Committee Minutes – July 25, 2012   | 14 |
| 4. Receive and File Agency Management Report –November 2013  | 19 |
| 5. Receive and File Notice of Upcoming Sub-Recipients for Job Access Reverse Commute and New Freedom Federal Funds | 28 |



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**E. CONSENT CALENDAR CONTINUED**

- |   |    |
|---|----|
| 6. Approve Plans and Programs Committee Recommendation to Authorize Interim CEO/General Manager to Implement Proposed Chino Hills OmniGo Tripper Service            | 31 |
| 7. Approve Plans and Programs Committee Recommendation to Cease Consideration of Potential Upland OmniGo Service  | 35 |
| 8. Authorize Award, Purchase Order ITS14-94, Catalyst Blade Switch and Servers  | 42 |
| 9. Adopt Resolution #270-14 Authorizing Destruction of Records  | 44 |
| 10. Approve Memorandum of Understanding for the Maintenance and Administrative Support Unit with Teamsters Local #166, effective July 1, 2013 through June 30, 2016 | 48 |
| 11. 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  | 50  |
| 2. Adopt Investment Policy Statement for 2014  | 54  |
| 3. Approve Amendment No. 2, SAP Enterprise Resource Planning (ERP) Enhancement Project               | 66  |
| 4. Authorize Award, Contract ADM14-12, Staff Legal Services  | 70  |
| 5. Authorize Award, Contract FIN14-38, Armored Vehicle & Fare Collection Counting Services           | 124 |
| 6. Authorize Award (Bench), Contract MNT13-107R (A-C), Bus Filters                                   | 156 |
| 7. Authorize Award, Contract MNT14-13, Landscaping Services  | 224 |
| 8. Authorize Award, Sole Source Contract MNT14-123, Genfare Equipment Parts and Repair               | 266 |
| 9. Authorize Award, Contract OPS14-03, Supervisor Vehicle On-Board Video Surveillance System (OBVSS) | 295 |
| 10. Authorize Release, Invitation for Bids IFB-MNT14-85, Parts Washers                               | 397 |
| 11. Authorize Release, Invitation for Bids IFB-MNT14-87, Parking Lot Sweeping Services               | 399 |

**G. PUBLIC HEARINGS**

There is no Public Hearing scheduled.



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**H. BOARD BUSINESS**

**Closed Session**

1. Conference with Labor Negotiator, P. Scott Graham, concerning labor negotiations with Amalgamated Transit Union Local No. 1704 regarding the Coach Operator Unit, pursuant to Government Code Section 54957.6
2. Conference with Legal Counsel from Nossaman LLP, Existing Litigation, Government Code Section 54956.9, subdivision (a), SANBAG v. World Oil Marketing Company, San Bernardino County Superior Court Case No. CIVDS 1104963, Parcel B-243, and SANBAG v. F&C Jara, San Bernardino County Superior Court Case No. CIVDS 1104964, Parcel B-245, B-247

**I. REMARKS AND ANNOUNCEMENTS**

**J. ADJOURNMENT**

ITEM #       D1      
**DATE:** January 8, 2014

**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 January 8, 2014.

<b>Item No.</b>	<b>Contract</b>	<b>Principals &amp; Agents</b>	<b>Subcontractors</b>
E8	Authorize Award Purchase Order for ITS14-94	<b><i>Dell, Inc.</i></b> <i>Round Rock, TX</i> <i>Amy Ivy</i> <i>Public Contract Manager</i>	<i>N/A</i>
F3	Approve Amendment No. 2 SAP Enterprise Resource Planning (ERP) Enhancement Project	<b><i>Ciber, Inc.</i></b> <i>Denver, CO</i> <i>Doug Owen</i> <i>Industry Solution Director</i>	<i>N/A</i>
F4	Authorize Award Staff Legal Services Contract ADM14-12	<b><i>Burke, Williams &amp; Sorensen, LLC</i></b> <i>Riverside, CA</i> <i>Eric S. Vail</i> <i>Partner</i>	<i>N/A</i>
F5	Authorize Award Armored Vehicle & Fare Collection Counting Services Contract FIN14-38	<b><i>LA Federal Armored Services, Inc.</i></b> <i>Los Angeles, CA</i> <i>Anthony Ash</i> <i>Sr. Vice President</i>	<i>N/A</i>
F6	Authorize Award (Bench) Bus Filters MNT13-107R (A-C)	<b><i>H&amp;H Auto Parts Wholesale, Inc.</i></b> <i>Arleta, CA</i> <i>Jim Holmquist, President</i>  <b><i>Muncie Reclamation and Supply</i></b>	<i>N/A</i>

<b>Item No.</b>	<b>Contract</b>	<b>Principals &amp; Agents</b>	<b>Subcontractors</b>
		<b><i>dba Muncie Transit Supply, Inc.</i></b> <i>Muncie, IN</i> <i>Steve Prince, Transit Pricing Manager</i> <b><i>Vehicle Maintenance Program, Inc.</i></b> <i>Boca Raton, FL</i> <i>Lindi Brooks, Director of Sales and Marketing</i>	
F7	Authorize Award Landscaping Services MNT14-13	<b><i>RP Landscape and Irrigation of San Bernardino</i></b> <i>San Bernardino, CA</i> <i>Roy Perez, Owner</i>	N/A
F8	Authorize Award Genfare Parts and Repair Sole Source Contract MNT14-123	<b><i>Genfare, a Division of SPX Corporation</i></b> <i>Elk Grove Village, IL</i> <i>Kim R. Green, President</i>	N/A
F9	Authorize Award Supervisor Vehicle OBVSS Contract OPS14-03	<b><i>Safety Vision LLC</i></b> <i>Houston, TX</i> <i>Michael Ondruch,</i> <i>Chief Financial Officer</i>	<i>ESP Services</i> <i>Houston, TX</i>

PSG/JS

ITEM #       E1      

**BOARD OF DIRECTORS' MEETING  
MINUTES  
DECEMBER 4, 2013**

**A. CALL TO ORDER**

Chair Alan Wapner called the regular meeting of the Omnitrans Board of Directors to order at 8:02 a.m., Wednesday, December 4, 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  
Mayor Ed Graham, City of Chino Hills  
Mayor Pro Tem Penny Lilburn, City of Highland  
Mayor Pat Morris, City of San Bernardino  
Supervisor Gary Ovitt, County of San Bernardino  
Councilmember Ed Palmer, City of Rialto  
Councilmember Dick Riddell, City of Yucaipa  
Mayor Pro Tem John Roberts, City of Fontana  
Mayor Walt Stanckiewicz, City of Grand Terrace  
Mayor Pro Tem Debbie Stone, City of Upland - Alternate  
Mayor Dennis Yates, City of Chino

**BOARD MEMBERS NOT PRESENT**

Supervisor Robert Lovingood, County of San Bernardino  
Supervisor James Ramos, County of San Bernardino  
Supervisor Janice Rutherford, 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  
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  
James Deskus, IPMO Project Analyst  
Andres Ramirez, Construction Manager  
Joanne Cook, Contracts Administrator  
Krystal Turner, Contracts Review Analyst  
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, January 4, 2014, at 8:00 a.m.

**C. COMMUNICATIONS FROM THE PUBLIC**

Krystal Chavira, representing the disabled community, suggested that the drivers be more sensitive to the disabled and senior community by taking sensitivity training, which could be provided by Rolling Start, and submitted letters from three clients for the record.

Jeffrey DeFillipes complemented Omnitrans drivers on good service, specifically the first run on Route 15 on Black Friday. Mr. DeFillipes submitted a list of the drivers that provided him good service for the record.

Luke Conner Sr. appeared before the Board to request installation of bus shelter and lighting on Route 7 at Sierra Way and Parkdale southbound and submitted a signed petition for the record that supports his request.

#### **D. CONFLICT OF INTEREST**

None.

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

- 1) Approve Board Minutes – November 6, 2013
- 2) Receive and File Administrative & Finance Committee Minutes – October 15, 2013
- 3) Receive and File Agency Management Report – October 2013
- 4) Receive and File Construction Progress Report #22 through September 25, 2013, sbX E Street Corridor BRT Project
- 5) Receive and File Comprehensive Operational Analysis of Omnitrans
- 6) Authorize Interim CEO/General Manager to Execute Downtown San Bernardino Passenger Rail Project Funding Agreement with San Bernardino Associated Governments (SANBAG)
- 7) Authorize Interim CEO/General Manager to Execute Memorandum of Understanding for Section 5339 Bus and Bus Facilities Formula Grant Programs with San Bernardino Associated Governments (SANBAG)
- 8) Authorize Interim CEO/General Manager to Execute Bus Bridge Agreement with Southern California Regional Rail Authority (SCRRA)
- 9) Authorize Additional Spend Authority, Contract IPMO14-116, As Needed Scheduling Services for sbX E Street Corridor BRT and Vehicle Maintenance Facility Projects
- 10) Authorize Award, Purchase Order for sbX Service Truck
- 11) Press Articles and Letters of Interest to the Board

M/S/C (Eaton/Spagnolo) that approved the Consent Calendar as presented.

#### **F. DISCUSSION ITEMS**

- 1) CEO/General Manager's Report

Interim CEO/General Manager Graham reviewed the CEO/General Manager's report for October 2013.

- 2) Approve Proposed Charter for Operations and Safety Board Committee

M/S/C (Yates/Roberts) that approved the Proposed Charter for a new Board Operations and Safety Committee and appoint Board Members to Committee.

- 3) Ratify Award, Purchase Order ITS14-113, Tape Backup Library System

M/S/C (J. Gonzales/Lilburn) that ratified the action of the Interim CEO/General Manager's 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.



- 4) Authorize Interim CEO/General Manager to Execute San Bernardino Transit Center Funding Agreement with San Bernardino Associated Governments (SANBAG)

M/S/C (Yates/Dailey) that authorized the Interim CEO/General Manager to execute the 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.

- 5) Authorize Award, Contract MNT14-79, Personal Protective Equipment

M/S/C (Morris/Eaton) that authorized 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.

- 6) Authorize Award, Contract MNT13-100, Bus Tire Lease and Tire Services

M/S/C (Graham/Yates) that authorized 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.

- 7) Authorize Release, Invitation for Bids IFB-MNT4-24, Towing Services

M/S/C (Yates/Eaton) that authorized the Interim CEO/General Manager to release Invitation for Bids IFB-MTN14-24 for the provision of Towing Services for a two year base period with three single option years.

- 8) Authorize Release, Invitation for Bids IFB-MNT14-106, Wireless Mobile Column Lifts

M/S/C (Yates/Eaton) that authorized the Interim CEO/General Manager to release Invitation for Bids IFB-MNT14-106 for the provision of up to ten (10) Wireless Mobile Column Lifts.

9) Authorize Release, Invitation for Bids IFB-MNT14-133, Batteries

M/S/C (Yates/Eaton) that authorized 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.

**G. PUBLIC HEARING**

1. Public Hearing – Federal Transit Administration Section 5307 and Section 5339 Funds for Fiscal Year 2014

M/S/C (Palmer/J. Gonzales) that closed the Public Hearing concerning the Federal Transit Administration (FTA) §5307 and §5339 for Fiscal Year 2014, 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 8:23 a.m. The Board reconvened at 8:42 a.m.

M/S/C (J. Gonzales/Palmer) to approve the addition of an emergency item for action by the Board of Directors regarding the labor negotiations for the Teamsters Local Union No. 166 regarding the Maintenance and Administrative Support Unit.

M/S/C (Morris/Graham) that authorized the Interim CEO/General Manager to pay a \$500 stipend to the Maintenance and Administrative Support Unit before Christmas, upon ratification by the Teamsters Local #166 of the tentative agreement as presented to the Board of Directors. Final approval of the MOU shall be brought back to the Board of Directors in January 2014.

**I. REMARKS AND ANNOUNCEMENTS**

Member Josie Gonzales wished everyone a happy holiday season. Member Morris thanked the Teamsters Negotiation Team for working together to get a tentative agreement. Member Walt Stanckiewicz commended the Interim CEO/General Manager for stepping up and leading the organization after a tumultuous year.

## **J. ADJOURNMENT**

The Board adjourned at 8:45 a.m. The next regular meeting is scheduled for January 8, 2014, at 8:00 a.m., with location posted on the Omnitrans website and at Omnitrans' San Bernardino Metro Facility.

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Vicki Dennett, Assistant to CEO/General Manager

ITEM #           E2          

**EXECUTIVE COMMITTEE MEETING  
MINUTES  
NOVEMBER 1, 2013**

**A. CALL TO ORDER**

The Executive Committee meeting was called to order by Chair Alan Wapner at 9:10 a.m., Friday, November 1, 2013.

**COMMITTEE MEMBERS ATTENDING**

Councilmember Alan Wapner, Board Chair  
Mayor Pro Tem Sam Spagnolo, Vice Chair  
Mayor Pro Tem Penny Lilburn, City of Highland  
Mayor Pat Morris, City of San Bernardino  
Councilmember Dick Riddell, City of Yucaipa

**OMNITRANS STAFF ATTENDING**

P. Scott Graham, Interim CEO/General Manager

**B. COMMUNICATIONS FROM THE PUBLIC**

There were no communications from the public.

**C. DISCUSSION ITEMS**

1. Approve Executive Committee Minutes – October 4, 2013

M/S (Spagnolo/Morris) to approve Executive Committee Minutes of October 4, 2013.  
Motion was unanimous by members present.

2. Review and Provide Input on Proposed Board Operations and Safety Committee Charter

Committee discussed the proposed draft of the Operations and Safety Committee Charter and recommended moving it forward to the Board of Directors for approval in December. Board Chair Wapner will announce at the November Board Meeting that the Committee appointments to all Board Committees will be recast.

3. Personnel Policy #404, Advancement, Promotion and Salary Adjustments, Management and Confidential Employees – Discussion – Rescind Wage Freeze Implemented July 1, 2009, effective July 1, 2014

Interim CEO/General Manager reported that prior CEO/General Manager Durand Rall placed a wage freeze on Management/Confidential employees beginning July 1, 2009, with the Board of Directors supporting the freeze since that time. The Interim CEO/General Manager explained that although the Personnel Policies allow him to lift the freeze, he would like the support of the Executive Committee and the Board of Directors to rescind the wage freeze for Management/Confidential employees effective July 1, 2014.

The Executive Committee supported this direction and directed the Interim CEO/General Manager to advise the Board of Directors at the November Board of Directors' Meeting during discussion of the CEO/General Manager's Report.

Committee recessed at 9:18 a.m. and adjourned to Closed Session at 10:11 a.m.

#### **D. BOARD BUSINESS**

##### **Closed Session**

1. Conference with Labor Negotiator, P. Scott Graham, concerning labor negotiations with Teamsters Union Local 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.

##### **Open Session**

There was no reportable action taken during Closed Session.

#### **E. ADJOURNMENT**

The Executive Committee adjourned at 10:22 a.m.

Prepared by:

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Vicki Dennett, Assistant to CEO/General Manager

ITEM #       E3      

**PLANS & PROGRAMS COMMITTEE  
MINUTES  
July 25, 2012**

The Plans & Program Committee meeting was called to order by Chair Pat Morris at 11:04 a.m. on Wednesday, July 25, 2012.

Board Members Attending

Mayor Pat Morris, City of San Bernardino – Committee Chair  
Councilmember Ron Dailey, City of Loma Linda  
Mayor Pro Tem Lee Ann Garcia, City of Grand Terrace  
Mayor Pro Tem Penny Lilburn, City of Highland  
Mayor Ray Musser, City of Upland  
Councilmember Ed Palmer, City of Rialto  
Mayor Dick Riddell, City of Yucaipa  
Mayor Pro Tem Sam Spagnolo, City of Rancho Cucamonga  
Mayor Dennis Yates, City of Chino

Committee Members Absent

Supervisor Neil Derry, County of San Bernardino  
Supervisor Josie Gonzales, County of San Bernardino

Omnitrans Administrative Staff

Milo Victoria, CEO/General Manager  
Robert Miller, Chief Financial Officer  
Marjorie Ewing, Director of Human Resources  
Scott Graham, Director of Operations  
Jeremiah Bryant, Planning & Scheduling Manager  
Mitch Alderman, SANBAG  
Carol Angier, Administrative Secretary

**AGENDA ITEMS**

1. Approval of Plans & Programs Committee Minutes for May 30, 2012

M/S (Musser/Riddell) to approve the minutes of the May 30, 2012 Plans & Programs Committee meeting. Motion was unanimous by members present.

2. Receive & File Comprehensive Operational Analysis (COA) Update

Committee Chair Morris asked when the COA would be finalized. Mr. Alderman said he did not have an exact date, but it should be done the latter part of October. CEO/General Manager Victoria said at the last Committee meeting in May, staff did ask the COA consultant, AECOM, to give an update at this meeting. However, SANBAG informed us the consultant would not be at this meeting. Therefore, staff will provide basically the same update that AECOM provided at SANBAG's Commuter Rail and Transit Committee in June. Member Lilburn asked why AECOM is not attending this meeting, and CEO/General Manager Victoria said SANBAG instructed them not to come as the update was presented at their Commuter Rail & Transit Committee meeting.

Planning & Scheduling Manager Bryant said while most of the presentation is the same as AECOM's, staff will have a few more slides to provide a better understanding of the project and provide Omnitrans' perspective. He said the last COA status update was delivered to this Committee in May. At that time, Omnitrans had just received Technical Memo #2 (TM), Financial Analysis, from AECOM that included a \$99.1 million shortfall compared to the level required to maintain service over seven years starting in 2014. Omnitrans did provide comments on the TM, but has received no response to date from AECOM on our comments. In addition, Omnitrans has not received any further deliverables from AECOM (three more TMs were expected) or any requests from them for data. The only visible activity since May was AECOM's presentation at SANBAG's June Committee meeting. AECOM maintains the COA will be completed in September/October.

Member Spagnolo said this information needs to be presented to the full Board and not just this Committee. A letter was sent to the full Board from Chair Riddell that some important decisions need to be made regarding the COA within the next three months. Mr. Alderman said SANBAG never meant to deliver bits and pieces of various information for consideration. The intent was to deliver the final draft COA to both SANBAG and Omnitrans Boards. It was Omnitrans' request to review each Technical Memo to this Committee. Member Lilburn said some red flags came up during the study concerning large funding cuts for Omnitrans. It was the Board Members that gave direction to CEO/General Manager Victoria to provide more information and answers to this Committee.

Chair Morris said the COA has been a very slow process, has gone on longer than anticipated, and is very expensive. He assumes substantial memos have gone back and forth between Omnitrans and AECOM on the accuracy of the data analysis and data amendments. We need to present the finalized COA before both Boards in order to see the entire picture. Member Spagnolo said the COA was not conducted because Omnitrans was having problems, but instead has shown that Omnitrans is a very well-run, low-cost organization. There is a redirection of funding that could affect bus operations and strand passengers in the service area. Chair Morris said we are just receiving and analyzing a report on how to best to allocate these resources. No recommendations are being made at this point. Member Spagnolo asked if the Omnitrans Board would be making these recommendations. Member Riddell said Omnitrans has been put into a state of limbo due to reduced future funding. It is the SANBAG Board that will make the decision on the Redlands Rail, and funding will be taken from Omnitrans for this rail. While he is not against rail, he does not want to cut back bus service to thousands of people. Chair Morris said he agreed, and stated at the completion of this report, we will have the complete analysis and information necessary to decide how to allocate resources. Member Riddell said any

decisions should be delayed until completion of the COA. Chair Morris said that is up to SANBAG to make that decision as they are the allocators of the funding resources.

Mr. Alderman said SANBAG has taken no action at this point. Regarding the Redlands Rail, preliminary engineering and the environmental is all that is being done at this point. SANBAG also wants to do more Bus Rapid Transit (BRT) projects and more Metrolink projects. SANBAG has to decide what we can do with the funding we have. This is what our intent is. We have to do these projects in the most efficient manner possible. Chair Morris said we will find a way to get these SANBAG projects done and keep Omnitrans continuing operations. There is no need to panic at this point. When the COA is finalized, then we will decide what needs to be done. Member Riddell said if Omnitrans bus service has to be cut back due to lack of funding, it is the passengers in San Bernardino that will suffer the most. Chair Morris agreed and said this is why he supports the sbX BRT project.

Member Dailey asked what role the Omnitrans Board will have when the COA is finalized. Mr. Alderman said SANBAG will review it first and then make a decision on the funding levels. The Omnitrans Board will then have to decide what they will do with the available funding. AECOM will provide options for this Board to consider. Member Dailey said he is not satisfied with just seeing the final COA. It is important to review each TM as it is completed. The AECOM reports he has seen so far have not been very satisfactory. He asked if there was a conflict of interest with SANBAG and Omnitrans having many of the same Board Members. Chair Morris said while there may be a perception of a conflict, this process is still legal. Member Garcia said she agreed with Member Dailey that this Committee needs to review the individual reports rather than just the final COA. She asked if Omnitrans agrees with the data provided so far. Planning & Scheduling Manager Bryant said that the information in TM #2, Financial Analysis, is completed with the projected \$99.1 million shortfall locked in place. That will have an effect on the outcome of Phase II and Phase III of the COA. Staff wanted to present the information on the shortfall prior to the completion of the other phases.

Member Spagnolo said that if the \$99.1 million funding cut to Omnitrans over seven years is a done deal, what will we do? The other cities in Omnitrans' service area will also suffer; not just San Bernardino. Member Riddell said he sent the letter to the Board on the COA because this funding cut is very serious for Omnitrans. Member Spagnolo said the funding cut is due to a redirection of funds by SANBAG for another project and not due to a lack of funding. Member Yates said no one on the SANBAG Board has voted yet on any redirection of funds. Mr. Alderman said this is an option on what may be done; no decision has been made yet by SANBAG.

Planning & Scheduling Manager Bryant continued with the June SANBAG presentation by AECOM. He reviewed what a COA is and what the COA will study. He stated that AECOM presented that the COA is not scoped to address other SANBAG projects such as the Redlands Rail, Metrolink Rail, other BRT routes beyond the sbX BRT, other San Bernardino County transit operators, or SANBAG's policy or allocations decision. While the details of these programs may be outside the scope of the COA, they are nevertheless the driving factors that required the need for a COA. The funding dynamics are driven by the rail program, and Omnitrans has asked several times for the funding impact of these programs detailed. The COA will be in three phases – Phase I which is the overview of existing conditions, Phase II which is the development of recommendations, and Phase III which is the action and implementation plan. The COA started in March 2011, and AECOM said Phase I will be completed in August 2012. They also believe the other two COA phases can



be completed by October 2012. AECOM's primary deliverable in Phase I was the financial analysis that provides a revenue and cost model for operation and capital programs for Omnitrans for 2014 to 2020. AECOM stated they were evaluating two funding scenarios – a baseline analysis that maintains existing service and capital plans and alternative services based on outsourcing, reductions in service, or other changes. To date, Omnitrans has seen no details on the alternative services from AECOM.

To develop Omnitrans' revenue projections, AECOM relied on SANBAG's Measure I Ten Year Delivery Plan that tentatively allocates funding to various transit projects and includes funding distributions besides Measure I. It is important to note that Omnitrans and SANBAG also formally adopted a funding plan through 2016 sent to the FTA to secure the sbX Project Construction Grant Agreement (PCGA). In AECOM's presentation to SANBAG, multiple funding sources for Omnitrans were shown. LTF has the largest share of Omnitrans operating revenue (49%). Omnitrans also receives Measure I funds. AECOM also stated Omnitrans receives STA funding. While Omnitrans FY12 budget was approved by SANBAG and includes STA funding of \$2.3 million, Omnitrans has not received any of the STA funding. SANBAG also informed Omnitrans the \$2.3 STA funding will not be allocated to us. In spite of this, the STA funding remains as part of AECOM's funding graph for Omnitrans.

Omnitrans' funding will be seriously reduced starting in 2014, which is the same year the sbX service starts. At the June SANBAG meeting, AECOM shows LTF funding for the Valley growing at a rate of 4.7 percent per year. However, Omnitrans will receive reduced LTF funding. Historically, LTF funding to Omnitrans was significantly higher, but was reduced by \$17 million due to lack of LTF funding around 2010. Although the LTF funds are increasing, the funds are being carved up for other transit projects. AECOM's analysis shows that Omnitrans is a cost effective provider of service, which was necessary due to the reduced LTF funding. Omnitrans has already reduced service and evaluated various degrees of outsourcing to accommodate the budget available. The shift in LTF funding is perceived by Omnitrans to be the primary reasons why the \$99.1 million shortfall to Omnitrans is a policy choice and not a structural issue.

The issue is similar for Measure I funds. In 2009, Omnitrans had a high of \$7.3 million in Measure I funds, but now will fall to only \$1.7 million in 2014. This will be a 77 percent reduction to Omnitrans in spite of the fact that Measure I funds are growing in the Valley by five percent and will keep growing at over four percent per year. Chief Financial Officer Miller said if Omnitrans is not able to provide and maintain sbX service, along with the other service we provide, the FTA will consider this a breach of contract. This reduction of funding will result in a likely reduction of Omnitrans service by over 25 percent.

At the SANBAG Committee meeting, AECOM also developed a capital cost model based on their analysis of Omnitrans' capital needs. Staff is concerned about this methodology because the peaks and valleys of the capital plan are not in line with our continual gradual fleet replacement goals. AECOM's revenue assumptions rely on two issues. The first one is nearly \$20 million in California's Prop 1B bond sales. The problems with this funding is that California has not been selling bonds as they did in the past, and this funding source is not expected to resume in the time frame provided. The second issue is the assumption that Omnitrans will obtain funding from \$16 million in competitive bus replacement grants. As these grants are competitive, there is no guarantee that Omnitrans will obtain the amount of grants needed to fund bus replacements. This funding relies too heavily on unlikely funding sources and will have a negative impact on bus replacement and drive up maintenance costs.

Task 5 is a review of Omnitrans' administrative functions. AECOM compared Omnitrans to 22 peer transit agencies. Planning & Scheduling Manager Bryant reviewed the chart that showed Omnitrans to be an efficient lower-cost provider when evaluated on cost per passenger mile, cost per trip, cost per vehicle hour, and operations cost per trip. Our demand response service is also better than average in terms of efficiency. As Omnitrans is already a low cost provider, the reduced funding will make it difficult to meet our budget without significant reductions in service.

Task 6 is the alternative service delivery that addresses outsourcing. The first time Omnitrans saw anything on this Task was at the June SANBAG Committee meeting. AECOM recommended using the CTSA to manage Access growth. AECOM also stated that SANBAG may be more appropriate to handle large capital projects. Omnitrans has historically evaluated each project to partner with the best option, be it SANBAG, private partners, contractors, or in-house staff. This allows us the best ability to economically use federal monies to deliver the most transit to our passengers. It is best to evaluate all these options rather than just use one – SANBAG. AECOM reviewed outsourcing options including some weekend service, all of West Valley, and all fixed route service. AECOM did state it would be difficult to find a large area for savings in the administration area because Omnitrans already evaluates these options on a regular basis.

The next step for AECOM is to finalize Phase I, which is scheduled for August. Phases II and III are due by September/October. Omnitrans requests that in addition to evaluating cuts, AECOM and SANBAG also look at ways to minimize the funding reductions as they are the driving factor behind the COA analysis. Chair Morris said that when the final COA is available, SANBAG and Omnitrans should form a joint committee to review it. Member Lilburn said she disagreed, as recommendations may be made that have a negative effect on Omnitrans. Member Garcia said the current findings should be presented to both Boards for them to have a better understanding, especially the Measure I issue. Member Spagnolo agreed. Member Riddell stated that no decision should be made until both Boards have reviewed the COA. Chair Morris said SANBAG has made no decisions yet on the funding or what projects will get the funding. SANBAG will allocate funding for projects that have the most priority. Member Riddell said SANBAG controls the funding and should not make any decision until this is ironed out. Priorities need to be determined. After some discussion, Committee consensus was to send a supplemental agenda for the August 1 Omnitrans Board of Directors' meeting stating the concerns of this Committee regarding the \$99.1 funding shortfall to Omnitrans.

Chair Morris said the next Committee meeting will be scheduled when the COA is finalized. Several Committee members requested continual updates be provided to this Committee. The Plans & Program Committee meeting adjourned at 12:54 p.m.

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Carol Angier, Recording Secretary

ITEM # E4

## **AGENCY MANAGEMENT REPORT**

**November 2013**  
**FISCAL YEAR 2014**

### **Agency Results**

#### **Operating Revenue**

November total Operating Revenue of \$6,144,314 is 180,473 over budget. Year-to-Date (YTD) Operating Revenue of \$30,593,614 is \$774,409 over budget. The positive current month and YTD variances are driven primarily by the recognition of the CNG fuel tax credit.

#### **Operating Expense**

November Operating Expense of \$5,297,357 is \$666,484 or 11% under budget. YTD Operating Expense of \$27,547,514 is \$2,271,691 or 8% under budget. The positive current month and YTD variances are driven by labor, fringe benefits, material and supplies, services and occupancy all coming in under budget.

#### **Ridership**

During the month of November, Omnitrans carried a total of 1,272,097 passengers. This consisted of 1,234,439 on Fixed Route service and 37,658 on Demand Response routes. YTD Ridership is 6,696,715, which reflects a total system decrease of 4.0% when compared to the same period last year.

#### **Revenue Hours/Revenue Miles**

During the month of November, Omnitrans provided a total of 63,279 revenue hours reflecting a decrease of 3.09% versus the same period last year. Omnitrans logged a total of 847,605 revenue miles during the month, reflecting a decrease of 4.46% when compared to same period last year. YTD Omnitrans provided a total of 332,496 revenue hours reflecting a decrease of .91% versus the same period last year. Also, YTD Omnitrans logged a total of 4,576,588 revenue miles reflecting a decrease of .92% when compared to same period last year.

### **Farebox Recovery Ratio**

November farebox revenue for Fixed Route/Omnalink is \$1,115,003 versus \$1,189,937 for the same period last year. This is a decrease of 6.30%. The farebox recovery ratio for the month is 25.60%. YTD farebox revenue for Fixed Route/Omnalink is \$5,566,015 versus \$5,595,125 for the same period last year. This is a decrease of .52%. YTD farebox recovery ratio is 24.80%.

November farebox revenue for Access is \$121,018 versus \$119,049 for the same period last year. This is an increase of 1.65%. Farebox recovery ratio for the month is 12.85%. YTD farebox revenue for Access is \$647,971 versus \$639,014 for the same period last year. This is an increase of 1.40%. YTD farebox recovery ratio is 13.01%.

### **Financials**

Total Salaries and Benefits of \$3,803,959 are \$53,958 under budget for the month of November. YTD Salaries and Benefits of \$16,547,070 are \$742,516 or 4% under budget. The positive current month and YTD variance is primarily driven by headcount being less than planned.

Total Services are \$116,318 or \$140,871 under budget in November. YTD Total Services are \$705,899 or \$580,046 under budget. The positive monthly and YTD variances are driven by professional services being less than planned.

Materials and Supplies are \$599,838 or \$174,200 under budget in November. YTD Materials and Supplies are \$3,426,643 or \$443,546 under budget. The positive monthly and YTD variances are driven by rolling stock parts, CNG fuel and gasoline being less than planned.

Purchased Transportation is \$748,322 or \$11,990 under budget in November. YTD Purchased Transportation is \$3,560,699 or \$240,862 under budget. The positive current month and YTD variances are driven by favorable pricing in the current contract based on milestones being met.

Other Expenses are \$428,920 or \$250,566 under budget in November. YTD Other Expenses are \$3,186,088 or \$211,344 under budget. The positive current month and YTD variances are principally driven by the timing of payments related to software maintenance contracts making occupancy cost lower than planned.

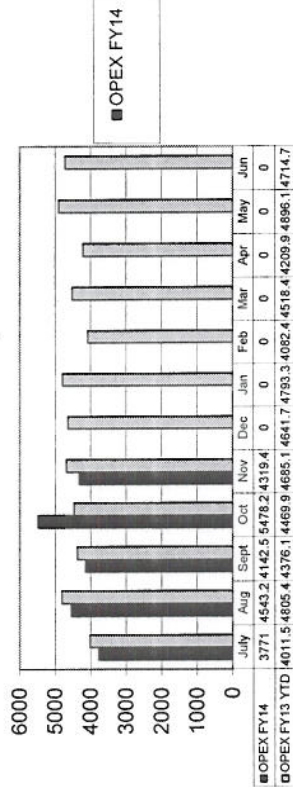
**PERFORMANCE STATISTICS  
FISCAL YEAR 2014  
November 2013**

	<u>Current Month</u>		<u>YR/YR</u>	<u>Year-To-Date</u>		<u>YR/YR</u>
	<u>November 2013</u>	<u>November 2012</u>	<u>inc/(dec)</u> <u>CURRENT</u>	<u>November 2013</u>	<u>November 2012</u>	<u>inc/(dec)</u> <u>YTD</u>
<b>Total Passenger Revenue &amp; Subsidy</b>						
Fixed Route	\$1,112,373	\$1,186,911	-6.3%	\$5,552,525	\$5,580,981	-0.5%
Demand Response	\$123,648	\$122,075	1.3%	\$661,371	\$653,158	1.3%
<b>Total Passengers</b>						
Fixed Route	1,234,439	1,312,902	-6.0%	6,488,252	6,771,537	-4.2%
Demand Response	37,658	39,799	-5.4%	208,463	208,137	0.2%
<b>Farebox Recovery Ratio</b>						
Fixed Route/OmniLink	25.60%	25.18%		24.80%	24.83%	
Access	12.85%	11.64%		13.01%	12.71%	
<b>Total Passengers per Revenue Hour</b>						
Fixed Route	24.9	26.1	-4.6%	25.0	26.2	-4.6%
Demand Response	2.7	2.6	3.5%	2.8	2.7	5.6%
<b>Revenue per Passenger</b>						
Fixed Route	0.90	0.90	-0.3%	0.86	0.82	3.8%
Demand Response	3.28	3.07	7.0%	3.17	3.14	1.1%
<b>Cost per Passenger</b>						
Fixed Route	3.50	3.57	-1.9%	3.43	3.30	3.9%
Demand Response	25.97	26.74	-2.9%	24.81	25.02	-0.9%
<b>Cost per Revenue Hour</b>						
Fixed Route	87.21	93.23	-6.5%	85.83	86.54	-0.8%
Demand Response	71.11	70.72	0.6%	70.54	67.37	4.7%

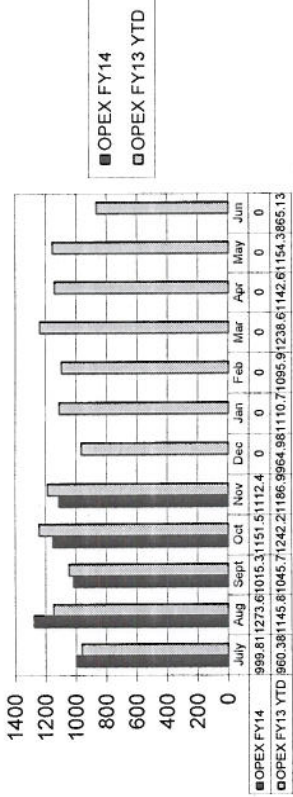
	<u>Actual</u>	<u>Target</u>
<b>On Time Performance</b>		
Fixed Route	85.44%	90%
Demand Response	88.77%	90%
<b>Headcount</b>	625	669
(includes PT Operators, excludes IPMO)		



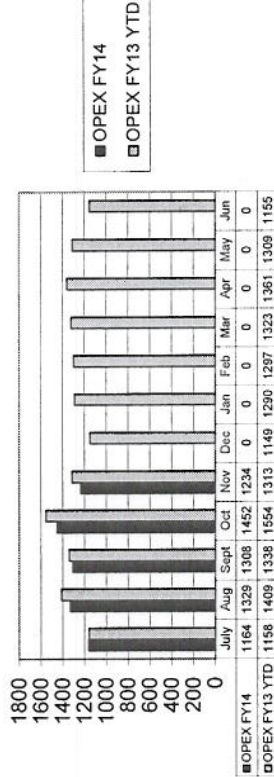
### Fixed Route Operating Expense Thousands



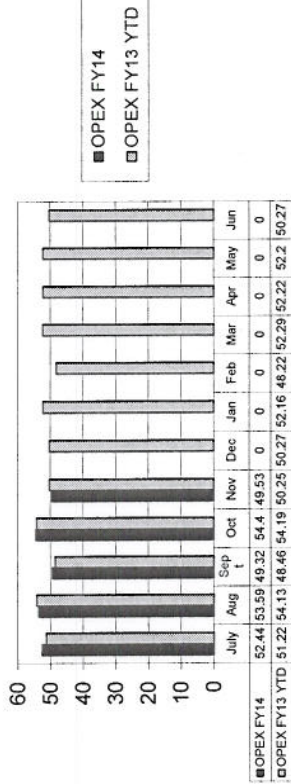
### Fixed Route Passenger Revenue Thousands



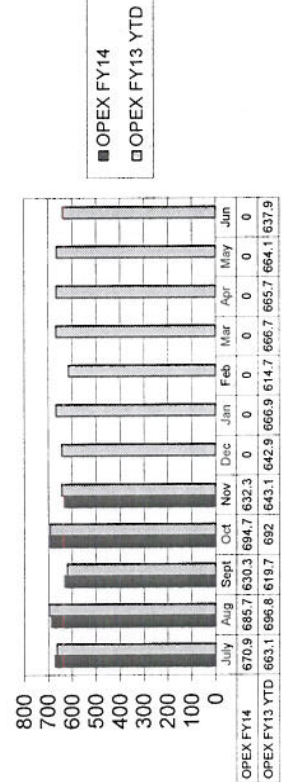
### Fixed Route Ridership Thousands



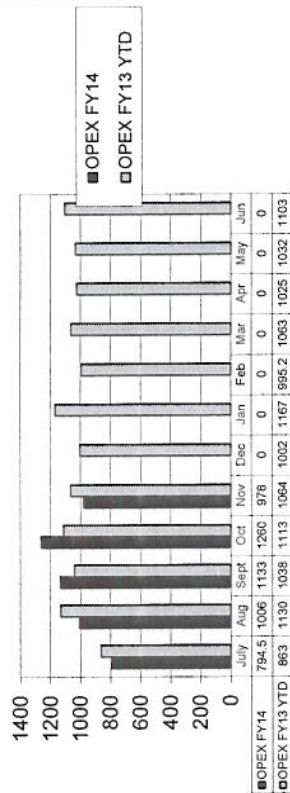
### Fixed Route Revenue Hours Thousands



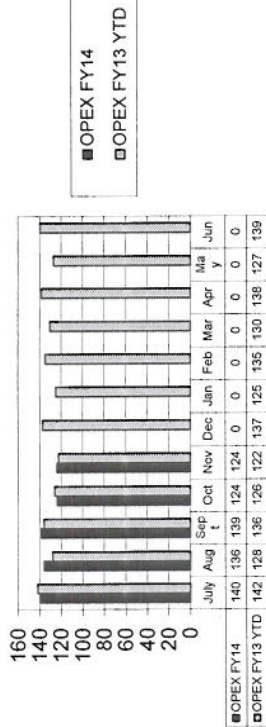
### Fixed Route Revenue Miles Thousands



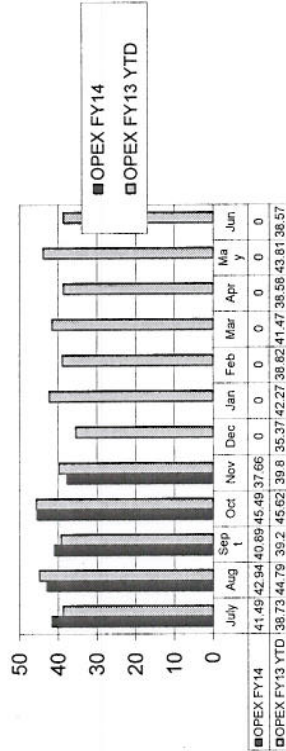
### Demand Response Operating Expense Thousands



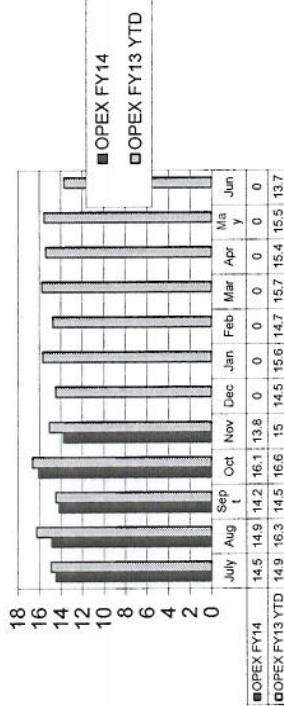
### Demand Response Passenger Revenue Thousands



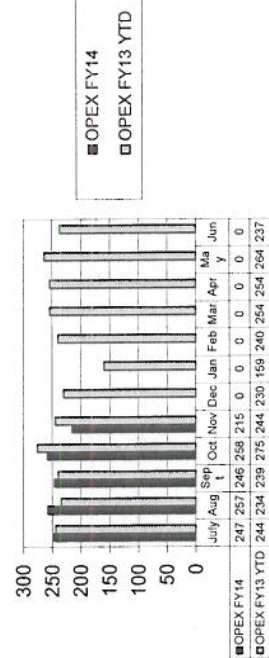
### Demand Response Ridership Thousands



### Demand Response Revenue Hours Thousands



### Demand Response Revenue Miles Thousands



# Statement of Operations

## Fiscal Year: 2014

CURRENT MONTH: November 2013					YEAR-TO-DATE: November 2013				
	<u>Actual</u>	<u>Budget</u>	<u>Fav/(Unf)</u>	<u>% of Budget</u>	<u>Operating Revenues</u>	<u>Actual</u>	<u>Budget</u>	<u>Fav/(Unf)</u>	<u>% of Budget</u>
<u>Operating Revenues</u>									
	1,208,634	1,229,823	(21,188)	98%	Passenger Fares	6,067,796	6,149,113	(81,317)	99%
	27,387	27,477	(90)	100%	Measure I Subsidy - Fares	146,189	137,386	8,803	106%
	397,523	397,523	0	100%	Measure I Subsidy - Operating	1,987,615	1,987,614	1	100%
	23,617	25,000	(1,383)	94%	Auxiliary Transportation Revenue	121,983	125,000	(3,017)	98%
	187,051	7,083	179,968	2641%	Non-Transportation Revenue	682,192	35,417	646,775	1926%
	3,029,143	3,029,143	(0)	100%	LTF Operating	15,145,715	15,145,717	(2)	100%
	145,337	145,337	0	100%	STAF Operating	726,685	726,685	0	100%
	66,235	0	66,235	0%	JARC - Operating Assistance	222,993	0	222,993	0%
	1,059,387	1,102,455	(43,068)	96%	Capital Funds for Operations	5,492,445	5,512,273	(19,828)	100%
	6,144,314	5,963,841	180,473	103%	Total Revenues	30,593,614	29,819,205	774,409	103%
<u>Operating Expenses</u>									
	2,072,059	2,126,187	54,128	97%	Labor	10,610,514	10,630,934	20,420	100%
	1,331,901	1,331,730	(170)	100%	Fringe Benefits	5,936,556	6,658,652	722,096	89%
	116,318	257,189	140,871	45%	Services	705,899	1,285,945	580,046	55%
	599,838	774,038	174,200	77%	Materials and Supplies	3,426,643	3,870,189	443,546	89%
	97,476	268,350	170,874	36%	Occupany	1,116,078	1,341,750	225,672	83%
	493,731	429,791	(63,940)	115%	Casualty and Liability	2,337,615	2,148,956	(188,659)	109%
	0	4,107	4,107	0%	Taxes and Fees	2,833	20,534	17,701	14%
	748,322	760,312	11,990	98%	Purchased Transportation	3,560,699	3,801,561	240,862	94%
	6,154	75,797	69,642	8%	Printing and Advertising	77,148	378,983	301,834	20%
	(168,441)	(98,558)	69,883	171%	Miscellaneous Expense	(347,586)	(492,790)	(145,204)	71%
	0	34,899	34,899	0%	Lease and Rental	121,115	174,493	53,377	69%
	5,297,357	5,963,841	666,484	89%	Total Operating Expense	27,547,514	29,819,205	2,271,691	92%
	846,957	(0)	846,957		Net Gain (Net Loss)	3,046,100	(0)	3,046,100	
	3,403,959	3,457,917	53,958	98%	Sal & Ben	16,547,070	17,289,586	742,516	96%
	428,920	679,486	250,566	63%	Other	3,186,088	3,397,432	211,344	94%



**DATE:** January 8, 2014

**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 November, 2013. Sufficient funds are available to meet the obligations of the Agency for the next thirty-one days.

PSG:MS

OMNITRANS  
Treasurer's Report  
Month ending November 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		\$ 9,793,206.59			0.26%	
				\$ (600,000.00)	0.26%	
				\$ (800,000.00)	0.26%	
		\$ 8,400,000.00		\$ (1,600,000.00)	0.26%	
					0.26%	
		\$ 18,193,206.59		\$ (3,000,000.00)		
Net LAIF Funds				\$ 15,193,206.59		\$ 15,193,206.59
Fair Marketing Value	Fair Value Factor				1.000567320	\$ 15,201,826.00
Union Bank Money Market GMRA		\$ 1,858,573.62				
	Interest	\$ 47.13			0.03%	
		\$ 128,566.00				
				\$ (22,938.49)		
		\$ 1,987,186.75		\$ (22,938.49)		
				\$ 1,964,248.26		
				\$ 1,964,248.26		\$ 1,964,248.26
Citybank Morgan Stanley Futures Account		\$ 226,710.01				
	Gain/Loss for month	\$23,172.20				
		\$ 249,882.21		\$ -		
				\$ 249,882.21		\$ 249,882.21
		\$ 240,455.73				
	Passenger	\$ 1,006,567.68				
	Grants' Revenue	\$ 15,878,588.20				
	Miscellaneous Revenue	\$ 445,123.58				
	Transfers From (To) LAIF	\$ 3,000,000.00		\$ (8,400,000.00)		
	Transfers From (To) Money Market	\$ 22,938.49		\$ (128,566.00)		
	Transfers From (To) Morgan Stanley Futures Account					
	Accounts Payable			\$ (8,884,500.63)		
	Payroll and Payroll Taxes			\$ (2,225,623.76)		
	Employee Benefits			\$ (376,544.52)		
	Bank Service Charge			\$ (2,802.82)		
Net Union Bank Operating Funds		\$ 20,593,673.68		\$ (20,018,037.73)		
				\$ 575,635.95		\$ 575,635.95
Petty Cash		\$ 3,700.00		\$ 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						\$ 18,070,292.42

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:** January 8, 2014

**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:

<b>Payroll Period</b>	<b>Amount</b>	<b>Register #</b>
10/30/13-11/12/13	\$358,474.36	23
11/13/13-11/26/13	\$304,677.76	24

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

<b>Payroll Period</b>	<b>Amount</b>	<b>Register #</b>
10/21/13-11/03/13	\$876,061.79	23
11/04/13-11/17/13	\$910,930.68	24

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

<b>Register Date</b>	<b>Amount</b>	<b>Register #</b>
11/07/2013	\$7,380,368.97	653-654
11/14/2013	\$875,738.84	655
11/21/2013	\$628,392.82	656

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 # E5

**DATE:** January 8, 2014

**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: UPCOMING SUB-RECIPIENTS FOR JOB ACCESS REVERSE  
COMMUTE AND NEW FREEDOM FEDERAL FUNDS**

**FORM MOTION**

Receive and file notice that Omnitrans will be entering into funding agreements with sub-recipients who were awarded Section 5316 Job Access Reverse Commute (JARC) and Section 5317 New Freedom (NF) federal funds through SANBAG's 2013 Call for Projects.

*This item was reviewed by the Plans and Programs Committee at its December 3, 2013 meeting, and recommended to the Board of Directors for receive and file.*

**BACKGROUND**

On December 3, 2013 staff informed the Plans and Program Committee that Omnitrans will be entering into funding agreements with sub-recipients who were awarded Section 5316 Job Access Reverse Commute (JARC) and Section 5317 New Freedom (NF) federal funds through SANBAG's 2013 Call for Projects.

On October 2, 2013 SANBAG's Board of Directors awarded 14 grants to eight (8) agencies. Of these 8 agencies, seven (7) will become sub-recipients of federal funding through Omnitrans because they are not eligible recipient of federal transit administration (FTA) funds. Omnitrans' pass through of federal funding in this round of awards will total \$1,664,548 in JARC funds and \$1,238,092 in NF funds as part of the 2013 Call for Projects. Table 1: Sub-Recipient Awards below provides details by agency.

**Table 1: Sub-Recipient Awards**

Sub-Recipient	JARC	NF
Community Senior Services		\$ 374,450
Victor Valley Transit Authority	\$ 167,429	\$ 75,381
Central City Lutheran Mission	\$ 54,727	\$ 98,231
Pomona Valley Workshop	\$ 318,751	\$ 123,960
Valley Transportation Agency	\$ 588,556	\$ 505,634
United Way 211	\$ 181,309	\$ 60,436
OPARC	\$ 353,776	\$ 10,074
Total	\$ 1,664,548	\$ 1,248,166

In addition, Omnitrans successfully was awarded a total of \$ 731,257 for three projects which include; Omnitrans Travel Training, Omnitrans Travel Training DVD and operating funds for all existing OmniGo routes.

Each sub-recipient applied for the federal funds through SANBAG's 2013 Specialized Transportation Combined Call for Projects, which evaluated and scored each proposed program. Based on the scoring the funded programs were selected. The awards are for a combination of capital and/or operating transportation projects that will span over two years.

As the designated recipient of federal transportation funding, Omnitrans is the pass-through agency of JARC and NF funds. In addition to reimbursing the sub-recipients, Omnitrans is required to ensure that each sub-recipient is complying with the FTA guidelines by monitoring each agency's program. SANBAG allows for a 4% administration cost to be reimbursed to Omnitrans to cover the required administrative and oversight work, which totals approximately \$144,000 over two years.

Over the next two to three months Omnitrans' Planning staff will be working with each sub-recipient on drafting each sub-recipient funding agreement. After each funding agreement is reviewed and approved by the legal counsel of each agency, the agreements will be presented to the Omnitrans Board of Directors for approval.

Each agreement will be presented to either the Administrative & Finance or Plans & Programs Committee, depending on committee schedules, before going to the Board of Directors.

The programs that were awarded funding and that Omnitrans will work to enter agreements with are:

- a) Community Senior Services: operating funds for the mileage reimbursement volunteer driver program for seniors and persons with disabilities;
- b) Victor Valley Transit Authority: operating funds for the Valley portion of the BV Link, which connects Barstow and Victorville with San Bernardino.
- c) Central City Lutheran Mission: operating funds to transport HIV clients to medical and work related trips.
- d) Pomona Valley Workshop: capital and operating funds to continue transporting clients.
- e) VTrans: operating funds for the Transportation Reimbursement Escort Program (TREP).

- f) VTrans: continue funding for Travel Training Programs.
- g) VTrans: operating funds for the taxi voucher program VTrans Ride.
- h) United Way 211: operating funds for the One Click One Call Access Mobility and Marketing program.
- i) OPARC: capital and operating funds for the OPARC transportation Connect program.

## **CONCLUSION**

Staff recommends that after each funding agreement comes before the Board of Directors the Board authorize the CEO/General Manager to execute the funding agreements of pass through monies to sub recipients awards awarded Section 5316 Job Access Reverse Commute (JARC) and Section 5317 New Freedom (NF) federal funds through SANBAG's 2013 Call for Projects.

PSG:AR:JB:BR

ITEM # E6

**DATE:** January 8, 2014

**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: PROPOSED CHINO HILLS OMNIGO TRIPPER SERVICE**

### **FORM MOTION**

Approve the Plans and Programs Committee recommendation to authorize the Interim CEO/General Manager to implement the proposed Chino Hills High School Tripper service to Butterfield Ranch (a very minor service change) to OmniGo Chino Hills Route 365 at the start of the next school year.

*This item was reviewed by the Plans and Programs Committee at its December 3, 2013 meeting and recommended for approval.*

### **BACKGROUND**

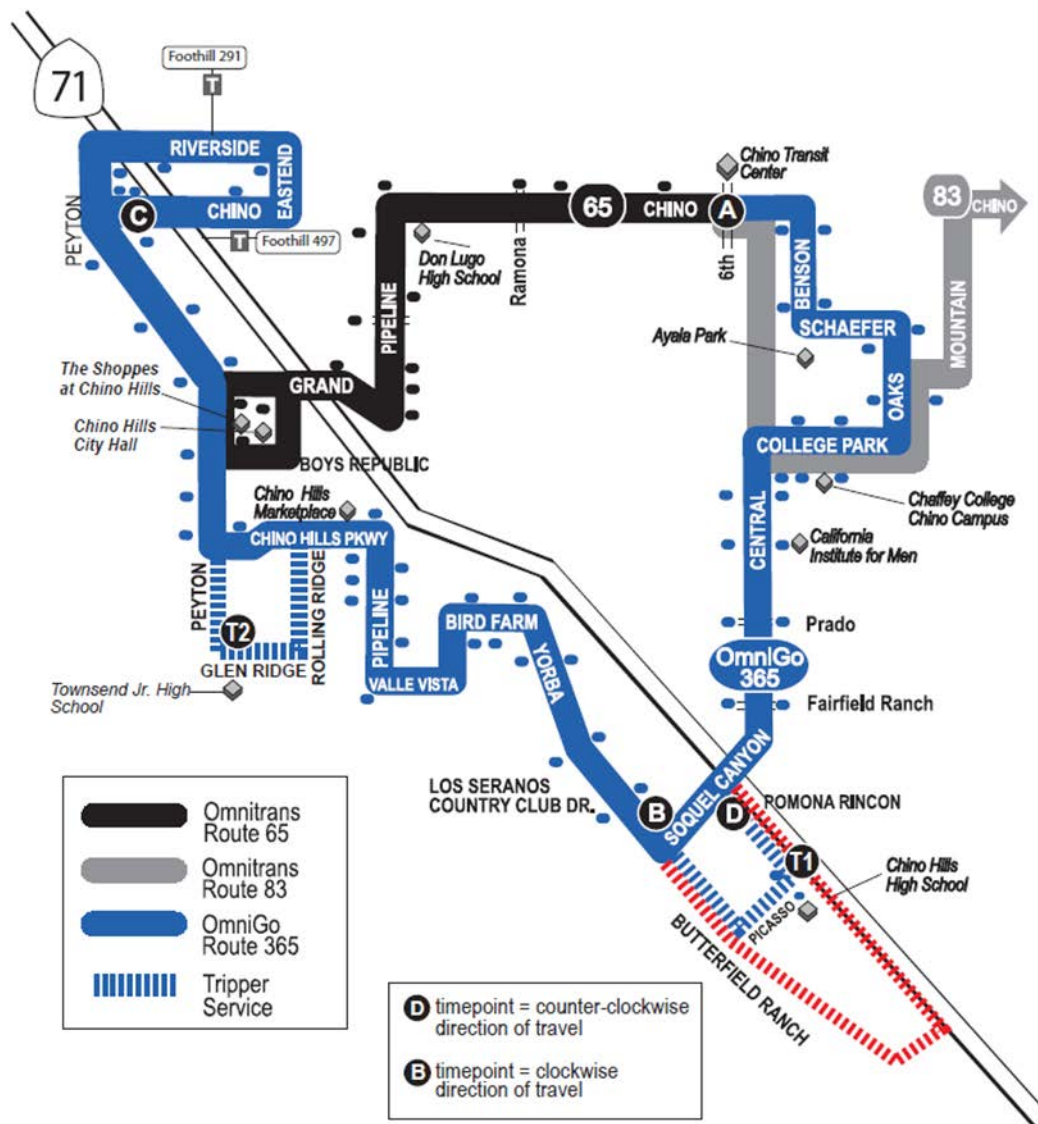
Omnitrans' OmniGo routes have been the fastest-growing ridership routes over the last few years. In fiscal year 2013 (FY2013), OmniGo Chino Hills Route 365 carried approximately 50,680 passengers, and is growing year-to-date at 16.9%.

Currently, this route provides school tripper service to both the Chino Hills High School and Townsend Jr. High School. Tripper service is when a bus deviates from normal routing in order to serve a specific trip generator at a specific time of day (like for a school at bell time).

Staff has received several requests to expand the already successful school trippers to serve a residential area that is southwest of the Chino Hills High School along Butterfield Ranch Road. The area currently does not have public transportation and is within the school's boundary. The proposed tripper would serve a larger population of students traveling to and from the Chino Hills High School. Exhibit 1 displays the expanded school tripper in red.

The existing tripper service on OmniGo Chino Hills has been very successful. Youth, Student and Go Smart fares account for 19.8% of ridership on this route. More specifically, ridership on the four total trippers account for 38% of the routes average weekday ridership despite representing only 12% of the daily 33 trips.

## Exhibit 1 – Chino Hills OmniGo 365 Proposed Route Alignment



The proposed route tripper expansion (displayed in red on Exhibit 1) would include the use of freeway 71 and Butterfield Ranch Road on the school tripper currently being utilized to serve the Townsend Jr. High School. The extension would provide service to a large residential area that is within the Chino Hills High School and Townsend Jr. High School boundary areas, allowing Omnitrans to serve a larger population of students traveling to and from the schools.

Through the implementation of the proposed tripper, staff aims to cultivate the same level of success in student ridership. The current school tripper that is providing direct service to the Chino Hills High School has an average daily boarding of 26 at the school stop, which attributes to the standing load, as shown in Exhibit 2.

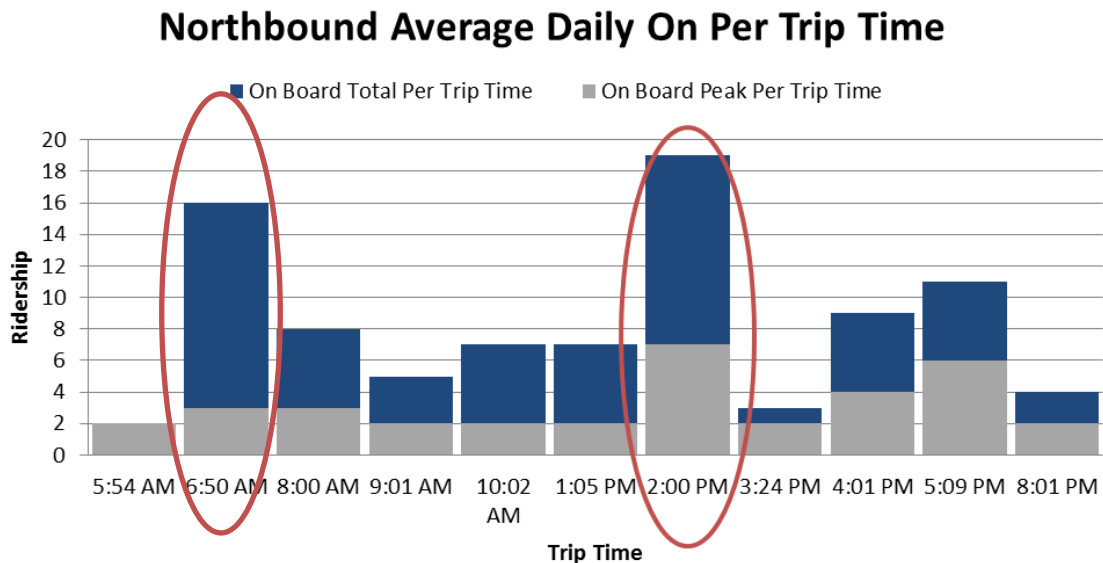


### Exhibit 2 – Existing Load Condition



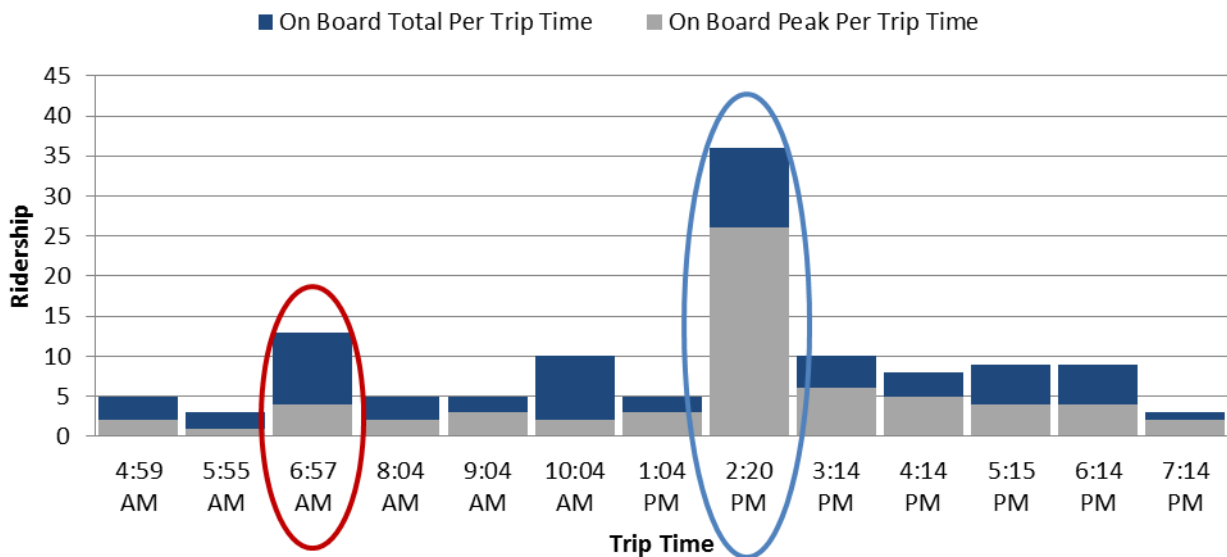
The highest ridership boarding and alighting activity are generated by the school tripper services that are provided twice a day as shown in Exhibits 3 and 4. The highlighted trips have shown to exceed Omnitrans load factor standard which measures the number of people on board at maximum compared to the seated capacity. Omnitrans current standard is a load factor of 1.2 (20% more than seated capacity) is acceptable. Daily weekday activity at the Chino Hills High School stop shows a regular standing load that exceeds 20% of the seating capacity which provides an additional justification to expand on the successful trips.

### Exhibit 3 – Northbound Ridership by Trip (Existing School Trippers Circled)



#### Exhibit 4 – Total Southbound Average Daily Ridership Alighting per trip

### Southbound Average Daily On Per Trip Time



The proposed route expansion conforms to our route deviation standard and is anticipated to increase estimated passengers per hour. If the new tripper performs like the existing tripper service to Chino Hills High School, annual ridership could increase by 17% (9,000 additional riders) with essentially no increases in operating cost.

Staff has analyzed the proposed service and can implement the service change at a nearly cost neutral setting. Cost neutrality is achieved through a slight shift in scheduled time required to extend the service to the new area. In addition, the proposed trips would only include two daily weekday trips (AM and PM) during school days.

In addition, the proposed service extension has been reviewed and approved by the staff level Service Planning, Monitoring and Implementation Committee (often just called the Service Planning Committee or (SPC)). The service would be provided by Omnitrans contractor, First Transit, who is currently providing all OmniGo service. Based on the ability to extend the service through the use of existing resources, the change would not require a contract change order.

Based on standard practices, staff would typically implement this change in the May service change with the tripper service running on the first day of the next school year.

### CONCLUSION

Staff recommends that the committee recommend approval of the proposed school tripper on Chino Hills OmniGo Route 365.

SG:AR:JB:BR

ITEM # E7

**DATE:** January 8, 2014

**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: POTENTIAL UPLAND OMNIGO SERVICE**

### **FORM MOTION**

Approve the Plans and Programs Committee recommendation that Omnitrans cease consideration of a potential Upland OmniGo service at this time.

*This item was reviewed by the Plans and Programs Committee at its December 3, 2013 meeting, and recommended that the Board support its recommendation.*

### **EXECUTIVE SUMMARY**

At the Plans and Programs Committee on December 3, 2013, staff presented options and issues related to enhancing service at the Upland Metrolink Station. Staff showed that many options have been evaluated and that the remaining options to improve service are costly and would likely result in limited additional ridership. Following a discussion on this item, the Plans and Programs Committee recommended that staff cease consideration of OmniGo service to Upland Metrolink at this time.

### **BACKGROUND**

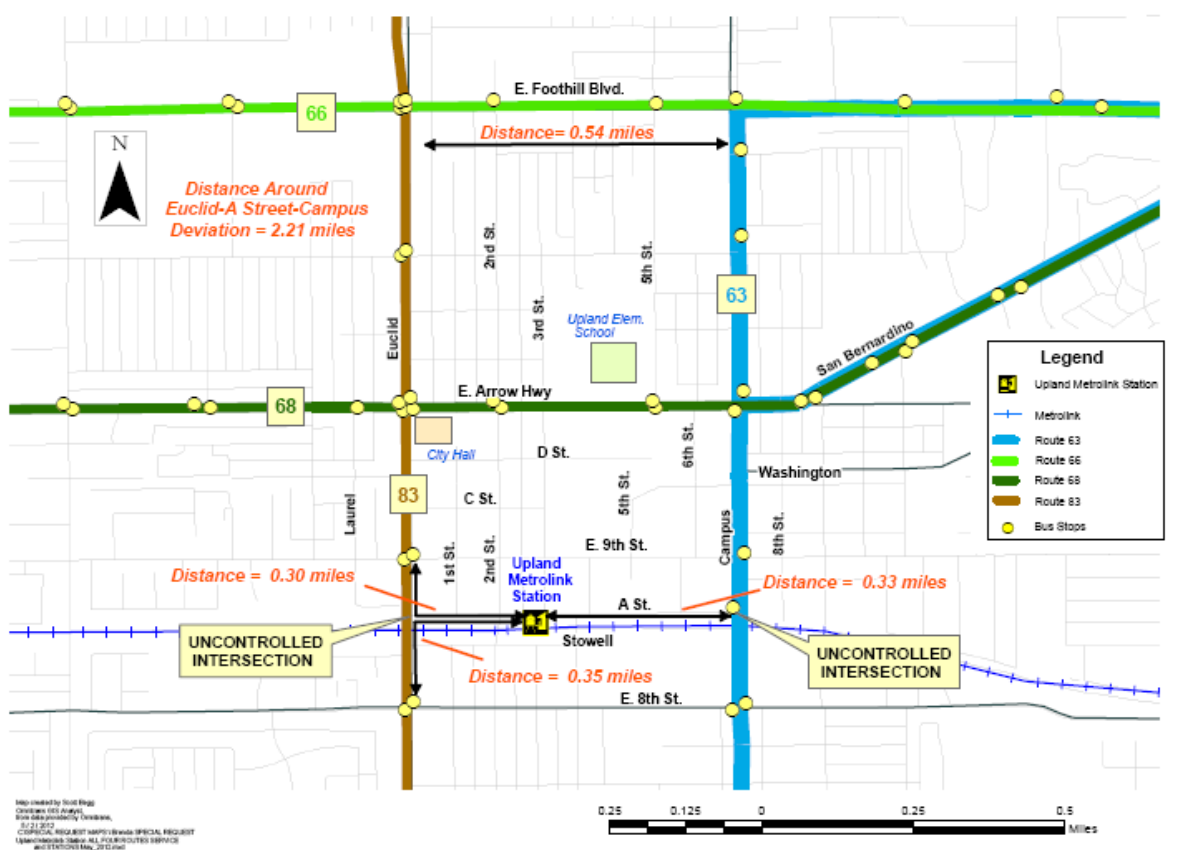
There are eight Metrolink Stations in the Omnitrans Service area: San Bernardino, Rialto, Fontana, Rancho Cucamonga, Upland, Montclair, East Ontario and Downtown Pomona. Six of the eight have direct access to Omnitrans bus service either in the station or on the immediately adjacent street. Bus service to the Upland Metrolink Station is the furthest away with a walk of 0.3 miles to the nearest bus stops.

**Exhibit 1: Metrolink Stations in Omnitrans Service Area**

Station	Metrolink Avg. Daily Boardings	Omnitrans Route(s)	Distances to nearest Stop (in miles)
San Bernardino	806	1	0.0
Rialto	295	22	0.0
Fontana	451	14, 15, 19, 20, 61, 66, 67, 82	0.0
Rancho Cucamonga	1,103	81	0.0
Upland	583	63 66 68 83	0.3 1.1 0.6 0.3
Montclair	364	65, 66, 67, 68, 80	0.0
East Ontario	438	81	0.2
Downtown Pomona	246	61	0.0

Exhibit 1 shows the Metrolink stations, Metrolink boardings and Omnitrans routes that serve the stations. Exhibit 2 shows the current routes and bus stops near the Upland Metrolink Station.

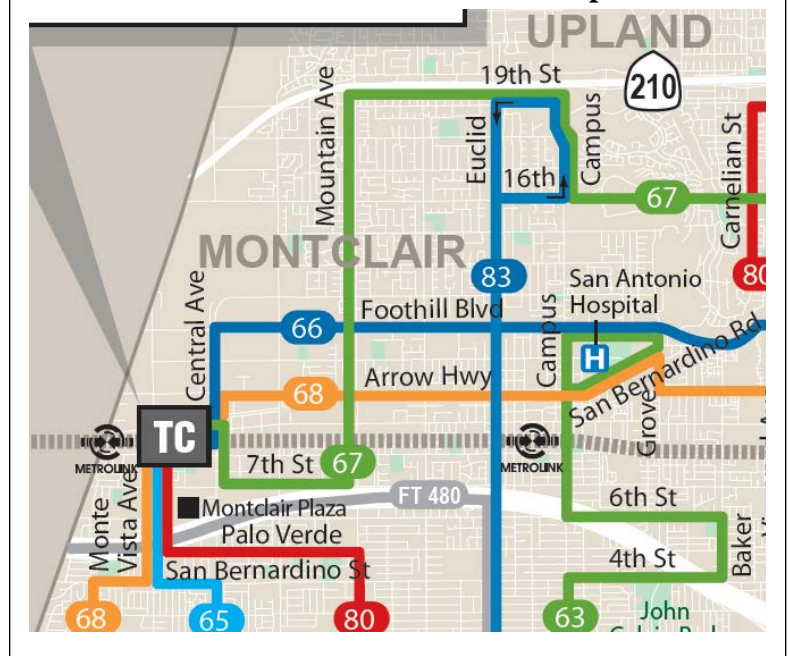
**Exhibit 2: Current Routes and Bus Stops near Upland Metrolink**



As demonstrated by the relatively high Metrolink boarding count in Upland, Omnitrans Planning staff agrees that Upland Metrolink Station is a worthwhile location for bus service. Despite this recognition, the location suffers from many safety and ingress/egress concerns. The streets around the station are narrow. The primary entrance to the station, from Euclid Ave. and A St., is an uncontrolled intersection that is difficult for a 40-foot bus to traverse.

While the Upland Metrolink Station does not currently offer a superior transfer point, Upland residents do have many direct service options to Metrolink stations. There are five routes that serve the City of Upland, and three of these travel from Upland directly to the Montclair Transit Center and Metrolink Stations. The remaining

**Exhibit 3: Omnitrans Routes in Upland**



two routes, offer a one transfer connection to Metrolink.

Expansion of bus service to Upland Metrolink is a frequent request from Upland staff and Stakeholders, but this request rarely comes in from riders on either Omnitrans' customer service number or through Omnitrans web site.

### **Solutions Evaluated**

Since service to the Upland Metrolink Station is a reoccurring request, service options have gone through the service evaluation process described previously in Item #E4 earlier on the agenda.

#### ***Stop Placement***

The first potential solution evaluated was to add bus stops at Euclid Ave. and A Street on Route 83. This would reduce the walking distance from 0.3 miles to 0.1 miles. This option suffered from two main issues: 1) The potential stop locations were not ADA-compliant and 2) the potential southbound stop on the west side of Euclid was across an uncontrolled intersection, which would be unsafe. The second stop was removed from consideration.

The northbound stop was still in consideration. When SANBAG released its call for Transportation Development Act (TDA) Article 3 Transit Stop Access Improvement projects, the City of Upland, with support from Omnitrans, applied for accessibility improvements for three stops including this northbound stop. On July 10, 2013, SANBAG awarded TDA Article 3 projects including this stop in Upland. The City received \$61,800 to make the three accessibility improvements.

Once improvements are made, Omnitrans will add a bus stop in the area. This will reduce the walking distance, but will still not specifically address placing a stop directly at the Metrolink Station.

#### ***Route Deviations***

A series of route deviations were evaluated as secondary solutions. Omnitrans staff evaluated deviating Route 83 from Euclid Ave. directly onto A Street to serve the Metrolink station on the north side. The width of A Street and the uncontrolled intersection at Euclid and A Street made this route alignment impossible given safety concerns.

Omnitrans then evaluated the option of placing a stop on Second Avenue, just to the west of the Metrolink Station. Access to this stop would come from wider streets of 8<sup>th</sup> and 9<sup>th</sup> that had controlled intersections at Euclid. A bus was taken out to test these configurations, and the turns were too tight to allow for safe passage of the bus through downtown Upland.

Omnitrans expressed these concerns to the city. The city engineer developed a recommended path of travel. This was similar to the one Omnitrans staff developed above, but this time used Third Avenue to 9<sup>th</sup> or Arrow instead of First and Second Avenues. On September 3, 2013, Omnitrans' Planning, Operations and Safety staff, along with Upland city staff from Public Works and Engineering, tested the proposed routing with a full size 40-foot bus. Omnitrans and Upland staff unanimously concurred that this path was unsafe.



Omnitrans staff believes that all routing deviations to serve the Upland Metrolink Station have been evaluated and found to be unsafe at this time. Staff does not plan any further evaluation of routing deviations in this area unless the built environment changes.

### ***Smaller Bus Circulator Service: OmniGo***

With the low cost options evaluated and exhausted, staff continued to consider options for service to Upland Metrolink due to the expressed importance of this service by stakeholders and City staff. Similar options were considered by AECOM during the Comprehensive Operational Analysis (COA) of Omnitrans.

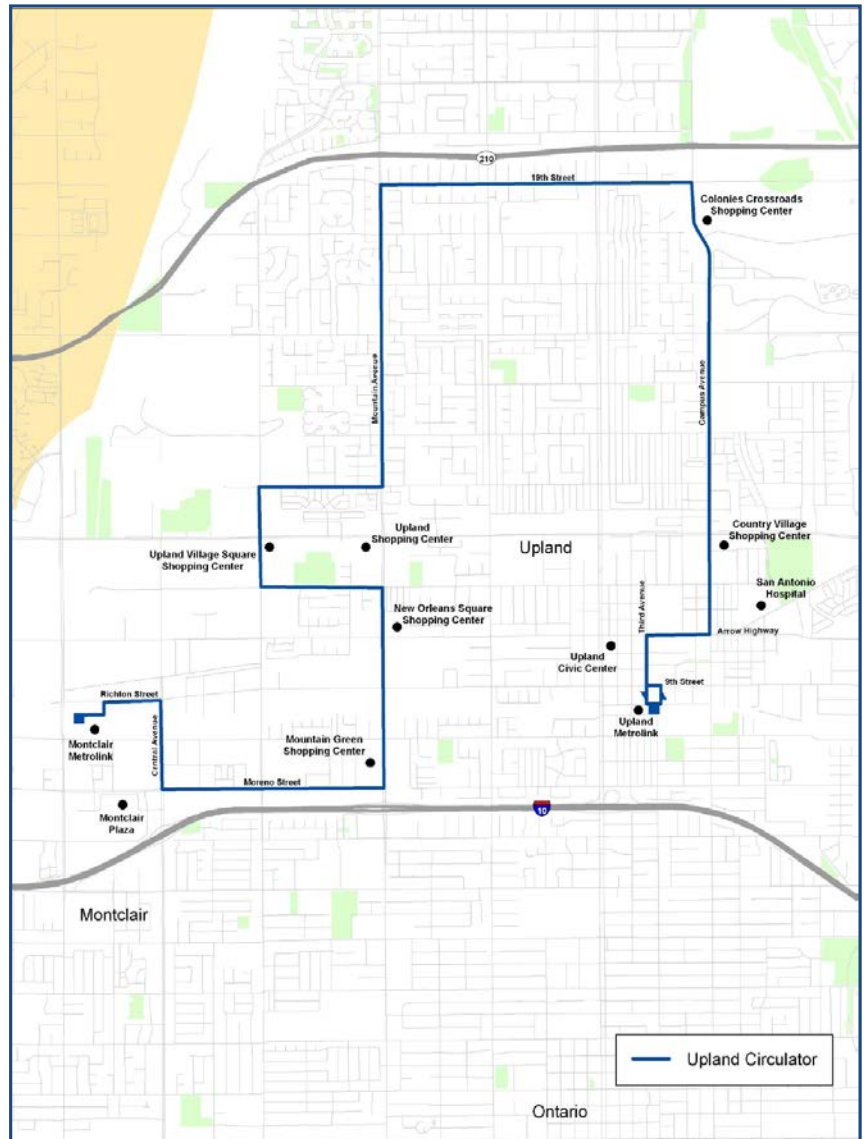
In the COA's unconstrained-plan<sup>1</sup>, AECOM recommended the addition of the Upland OmniGo shown in Exhibit 4. The first year of operation was shown in 2015, with 30-minute service and an estimated annual operating cost of \$1.16 million.

In the COA's constrained plan, operation of the Upland OmniGo still begins in 2015, but the frequency of service was reduced to 60 minutes. This brings the annual operating cost down to \$544,329 per year.<sup>2</sup>

This circulator may work if it is adopted as part of the short-range transit plan and is accompanied by a reduction in regular bus service in the area. However, if the route were enacted today, the route would duplicate unproductive service that is already provided by Route 67.

Additionally, one of the ridership generators that has been successful on each of the OmniGo routes thus far has been

**Exhibit 4 COA Proposed Upland Circulator**



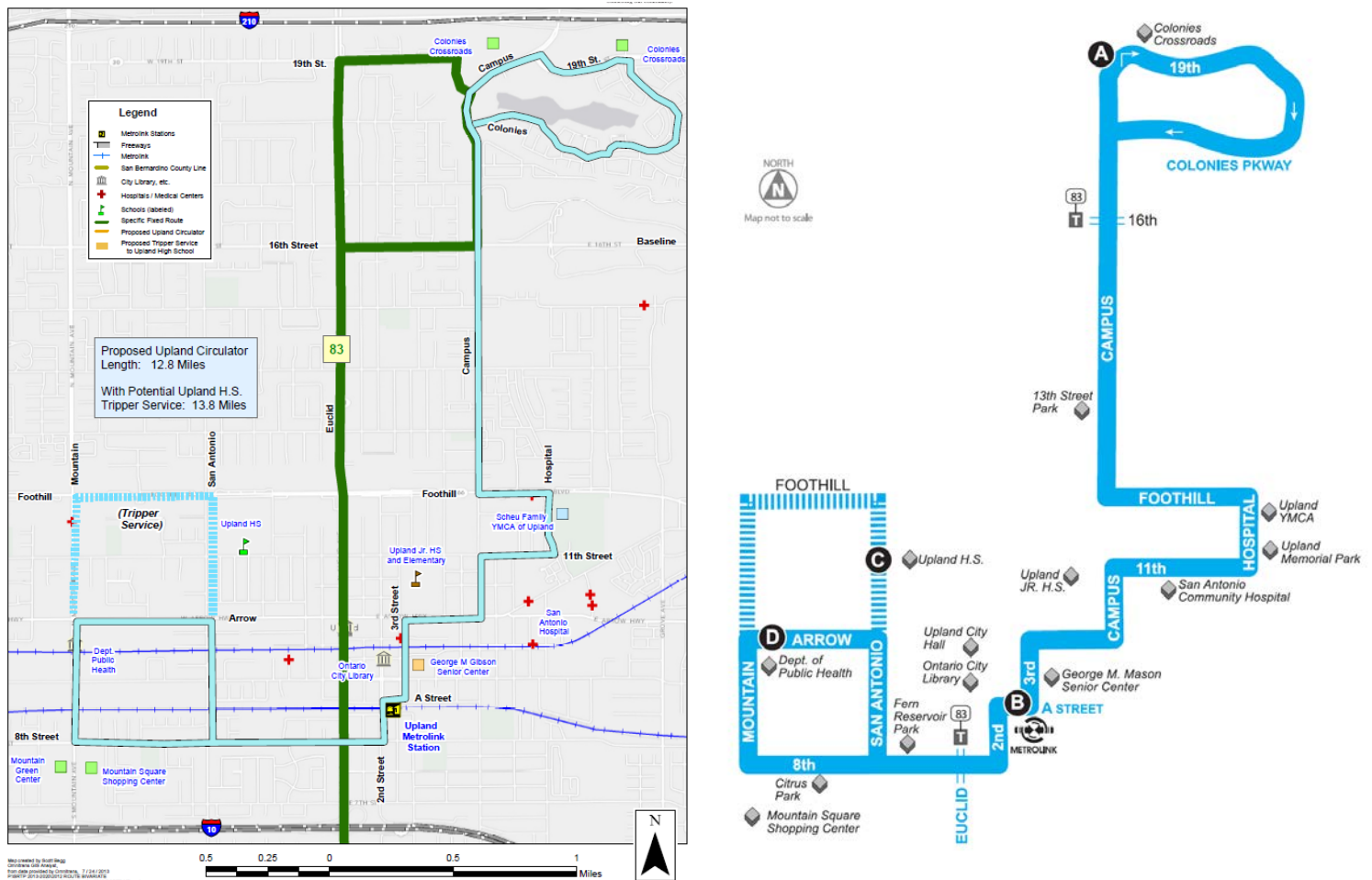
<sup>1</sup> COA of Omnitrans Final Report, April 2013: Phase II, page 1-77, Table 1-8.

<sup>2</sup> COA of Omnitrans Final Report, April 2013: Phase II, page 1-91, Table 1-23.

area schools. This proposed service does not serve Upland High School, which has the potential to provide reasonable ridership activity.

Omnitrans developed another potential Upland OmniGo route with the goal of reducing the number of vehicles and operating cost required. The other goal was to reach Upland High School, the Upland Metrolink Station, Scheu Family YMCA of Upland, George M. Gibson Senior Center and the Colonies Crossroads shopping center. This potential OmniGo Tripper is shown in Exhibit 5. The annual operating cost for service would be approximately \$300,000 per year. If a shorter trial period was implemented, the costs would be proportionally less (\$150,000 for a six month trial period, \$100,000 for a 4 month trial period).

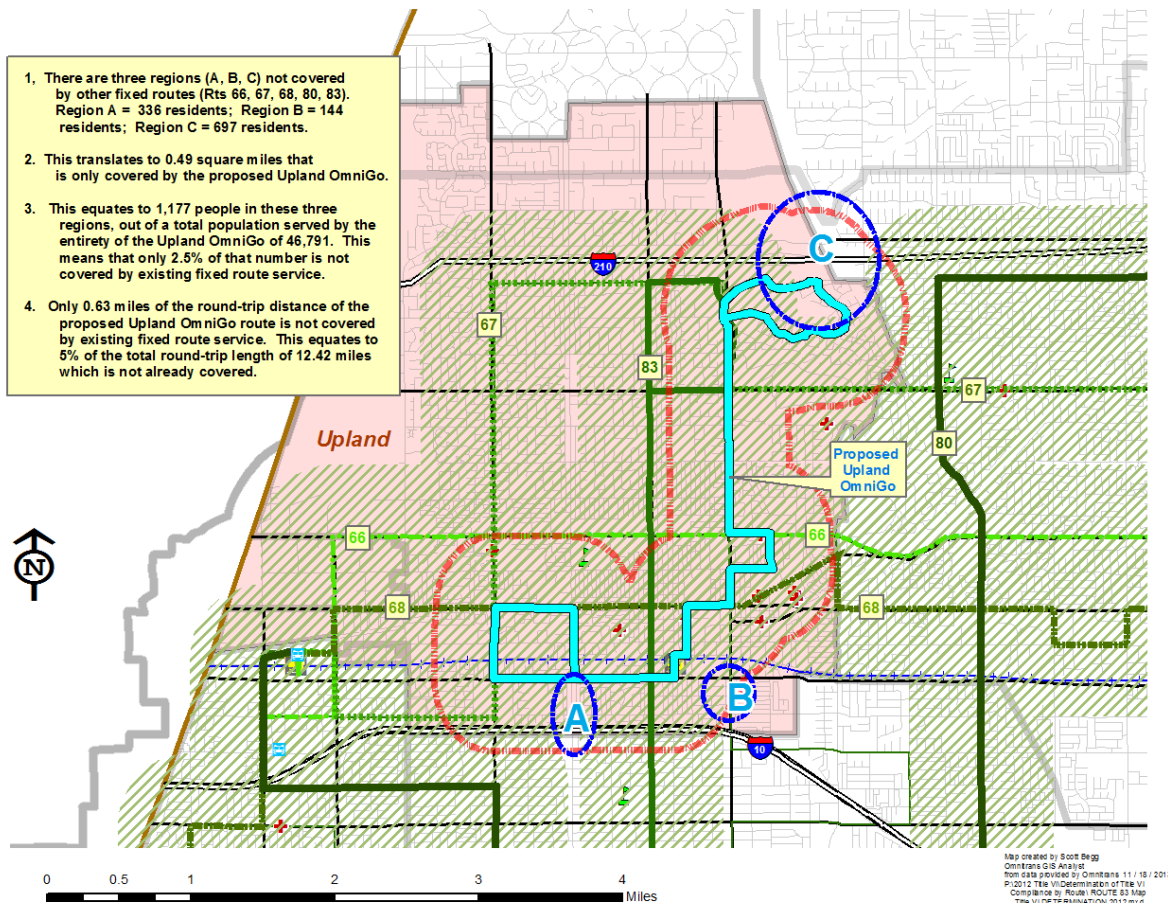
**Exhibit 5: Potential Upland OmniGo Service (Two Maps)**



This potential Upland OmniGo route reached all requested destinations and added Upland High School via a tripper service. It also eliminated the exact road duplication with the existing Route 67 service from the COA recommendations. However, all but 0.63 miles (5%) of this 12.4 mile round trip route are within the ½-mile walking standard of another route.

Similarly, the route's draw area includes a population served of 46,791. However, all but 1,177 people (2.5% of the total draw area) are served by an existing route and a ½-mile acceptable walking distance. These areas are shown in Exhibit 6 below and represented by the circles labeled A, B and C.

### Exhibit 6: Potential Upland OmniGo Service Compared to Existing Services



The current ridership just within that northern portion of the City of Upland has a daily activity of 60 riders per weekday, while ridership along Arrow has 218 boardings per day. In both cases, compared to the level of service offered, these ridership figures are below average and would indicate that the potential ridership for this potential Upland OmniGo is low. Ridership estimates are approximately 1,000-1,500 riders per month, which would yield a productivity of about 3.5 passengers per hour and a farebox recovery ratio under 5%.

Omnitrans has discussed with the city the need to make bus stops on the potential route ADA accessible. If Omnitrans were to implement service, the City of Upland would need to provide for the bus stop accessibility enhancements. Both the Planning and Stop & Stations staff have reviewed the route alignment and have identified 32 potential bus stop locations. Out of those identified bus stop locations, 30 will need enhancements to bring those stops into ADA compliance prior to the launching of the service.



### **Current Status**

Omnitrans staff has contemplated multiple evaluations of service to Upland Metrolink. SANBAG's awarding of TDA Article 3 Funds to Upland will allow for one stop to be moved closer to the Upland Metrolink Station, but will still not allow for service at the Upland Metrolink Station.

Omnitrans has evaluated multiple deviation options for regular fixed route service, but none of these work given the current street widths in the area.

Omnitrans has evaluated multiple OmniGo routes in the area. Of these, the routing shown in Exhibit 5 has the most potential, but generally duplicates existing service given Omnitrans ½-mile acceptable walking distance standard. The cost of this is \$300,000 per year, which could be reduced for a trial period less than one year. Omnitrans has not identified a specific funding source for this OmniGo at this time.

Omnitrans continues to receive regular requests to provide this service and seeks the Plans and Programs Committee's recommendation for how to proceed.

### **CONCLUSION**

Staff seeks a recommended course of action for a potential Upland OmniGo service for presentation to the Board of Directors for approval.

SG:AR:JB

ITEM # E8

**DATE:** January 8, 2014

**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 ITS14-94  
CATALYST BLADE SWITCH AND SERVERS**

**FORM MOTION**

Authorize the Interim CEO/General Manager to issue a Purchase Order to Dell, Inc. of Round Rock, TX, for the purchase of Catalyst Blade Switches and Servers in the amount of \$37,300.23.

**BACKGROUND**

On October 7, 2013, staff released Request for Quotes RFQ-ITS14-94 for Catalyst Blade Switch and Servers. The RFQ was posted on Omnitrans' online bidding system, and distributed to twenty three potential bidders. Two bids were received electronically by the deadline date of November 18, 2013, and were deemed responsive. Listed below are the bid prices:

Company	BID*
Dell, Inc.	<b>\$37,300.23</b>
New Tech Solutions, Inc.	\$42,072.10

*\*Bid pricing includes tax and delivery*

Award recommendation is being made to the lowest, responsive, and responsible bidder. Price is deemed fair and reasonable as the bid is \$14,599 less than the Independent Cost Estimate of \$51,900, 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 Information Technology's budget as follows:

<b>FUNDING</b>	<b>GRANT</b>	<b>YEAR</b>	<b>PROJECT NAME</b>	<b>INTERNAL ORDER</b>	<b>AMOUNT</b>
FTA	CA-90Y850	2011	Catalyst Blade Switch & Servers	D1122006F	\$29,840.18
STA	11-03-0MNB	2011	Catalyst Blade Switch & Servers	D1122006S	\$7,460.05

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

### **CONCLUSION**

Award of this purchase order will ensure Omnitrans' servers and information technology systems are replaced and remain in working condition.

PSG:JMS:jc

ITEM # E9

**DATE:** January 8, 2014

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

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

**FROM:** Jacob D. Harms, Director of Information Technology

**SUBJECT: ADOPT RESOLUTION NO. 270-14  
AUTHORIZING DESTRUCTION OF RECORDS**

**FORM MOTION**

Adopt Resolution No. 270-14, including Appendix A, authorizing destruction of records in accordance with Omnitrans' Records Management Program.

**BACKGROUND**

Omnitrans' current Records Management Program was initially adopted by the Board of Directors in 1998, with subsequent revisions approved in January 2006 and February 2007. The revision in 2007 incorporated the "Local Government Records Management Guidelines," which requires that a schedule of documents to be destroyed be approved by the Board of Directors on an annual basis.

**CONCLUSION**

Adoption of the resolution will provide Omnitrans with the authority to destroy records as defined in the Records Management Program.

PSG:JDH

**RESOLUTION NO. 270-14**

**A RESOLUTION OF THE OMNITRANS BOARD OF DIRECTORS, SAN  
BERNARDINO COUNTY, CALIFORNIA, AUTHORIZING THE DESTRUCTION OF  
OMNITRANS RECORDS LISTED ON APPENDIX "A."**

WHEREAS, California Government Code Section 34090 provides for the destruction of records that are no longer required, with the approval of the legislative body by resolution and the written consent of the Agency's Attorney; and

WHEREAS, the records listed on Appendix "A" have been determined to no longer be required by Omnitrans.

NOW THEREFORE BE IT RESOLVED that the Director of Information Technology is hereby authorized to destroy the records listed on Appendix "A".

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Omnitrans Board of Directors, at their regular meeting held on the 8th day of January 2014, by the following vote to wit:

AYES:

NOES:

ABSENT:

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P. Scott Graham, Interim CEO/General Manager  
Secretary, Omnitrans Board of Directors

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Alan D. Wapner, Chair  
Omnitrans Board of Directors

Approved as to form:

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Carol Greene  
Legal Counsel for Omnitrans

**APPENDIX "A"**  
**LIST OF OMNITRANS RECORDS TO BE DESTROYED**  
**JANUARY 8, 2014**

**ALL DEPARTMENTS**

Correspondence Files	FY 2010	& prior
Departmental Copies of Budgets	FY 2009	& prior
Departmental Copies of Accounts Payable Records	FY 2009	& prior
Departmental Copies of Accounts Receivable Records	FY 2008	& prior
Employee Grievance Files - Closed	FY 2004	& prior
Desk Calendars & Diaries	CY 2012	& prior
Telephone Message Books or Slips	CY 2011	& prior
Department Monthly Reports	FY 2011	& prior

**EXECUTIVE OFFICE**

Statement of Economic Interests	CY 2005	
Loss Runs	CY 2009 - 2010	
Claims - (Resolved for more than five years)	Closed prior to 1/31/09	

**PROCUREMENT**

Completed Contracts (if grand closed and audited with no activity since FY2005)	FY 2007	& prior
Formal Procurements Documents (other than resulting contracts, unless the resulting items received/audited occurred within 7 years or are still subject to audit)	FY 2007	& prior
Purchase Orders and Related Documentation ( Unless the resulting items receivec/audited occurred within 7 years or are still subject to audit)	FY 2007	& prior

**FINANCE**

Accounts Payable Records (With Grant closed and audited for three or more years)	FY 2007	& prior
Accounts Receivable Records	FY 2007	& prior
Annual Budgets	FY 2003	& prior
Balance Sheets	FY 2008	& prior
Banking Records	FY 2008	& prior
Capital Property Records (Inventory)	FY 2006	& prior
External Audits	FY 2003	& prior
Financial Reports and Statements	FY 2003	& prior
FTA and STA Annual Reports	FY 2007	& prior
General Accounting Procedures	FY 2003	& prior
General Accounting Records	FY 2007	& prior
Investments & Insurance Policies (if no open claims)	FY 2007	& prior
Payroll Records	FY 2007	& prior
Profit & Loss Statements	FY 2003	& prior
Tax Returns & Reports	FY 2007	& prior

**MARKETING**

Customer Contact Forms	FY 2010	& prior
Daily Sales Report	FY 2010	& prior
Employee Rideshare Record Forms	FY 2006	& prior
Promotional Contests/Drawings	FY 2010	& prior
Rideshare Affected Sites Files	FY 2008	& prior

**OPERATIONS**

Dispatch Logs	FY 2010	& prior
Service Interruption Reports	FY 2010	& prior
Daily Overtime Logs	FY 2010	& prior

Note: (All documents connected to an ongoing or active investigation, audit, or legal action are excluded)

**APPENDIX "A"**  
**LIST OF OMNITRANS RECORDS TO BE DESTROYED**  
**JANUARY 8, 2014**

**OPERATIONS continued**

Alternative Transportation Logs	FY 2010	& prior
Field Supervisor Logs	FY 2010	& prior
Schedule Adherence	FY 2010	& prior
Sign-on Sheets	FY 2010	& prior
Nutrition Trip Sheets	FY 2011	
Contract Services Accident Reports (Resolved for over five years)	FY 2005-2006	
Customer Contact Forms	FY 2006-2007	
Waybills	CY 2006	& prior

**HUMAN RESOURCES**

Applications for Employment & Related Documents	CY 2011	& prior
Employee Accident/Incident Reports & Related Documents (Resolved for over five years)	CY 2006	& prior
Employees Personnel Files (Terminated)	CY 2003	& prior
Service Awards Annual Records	CY 2007	& prior

**SAFETY/HEALTH & REGULATORY COMPLIANCE**

Employee Health Related Records	CY 1983	& prior
Environmental Related Records (EPA)	CY 1983	& prior
Regulatory Compliance Inspection Reports (with no activity since CY 2003)	CY 2004	& prior
Internal Inspection Reports	CY 2008	& prior
Safety and Health Training Records	CY 2010	& prior

**PLANNING**

Access Fare Structure, Zone Maps, Requests and General Issues	CY 2004	& prior
Annual Service Plan	CY 1993	& prior
Comments on Proposed Regulations	CY 2009	& prior
Comprehensive Operational Analysis Reports	CY 1993	& prior
Cooperative Service Agreements	CY 2003	& prior
Fixed Route Summary Reports	CY 2009	& prior
Fixed Route Surveys - All Routes	CY 2009	& prior
Omnitrans ADA Plan & Workpapers	CY 2004	& prior
On-Board Survey Forms	CY 2011	& prior
Short Range Transit Plan	CY 1993	& prior
Title VI Updates	CY 2006	& prior

**MAINTENANCE**

Operators' Daily Reports	CY 2010	& prior
Supervisors' Reports/Tailgate Forms	CY 2010	& prior
Maintenance Records of Disposed Vehicles	CY 2010	& prior
Work Orders	CY 2010	& prior
A/P Receipts & Statements	CY 2010	& prior
Nextel Bills	CY 2010	& prior
Tire Mileage	CY 2010	& prior
CII List	CY 2010	& prior
Estimate Of Repair	CY 2010	& prior
Period Report Back-Up	CY 2010	& prior
AQMD Inspection Forms	CY 2010	& prior
CNG Daily Inspections	CY 2010	& prior
LCNG Fueling Station Inspection	CY 2010	& prior
Retrofit/Rebuild	CY 2010	& prior

*CY = Calendar Year FY = Fiscal Year*

Note: (All documents connected to an ongoing or active investigation, audit, or legal action are excluded)

ITEM # E10

**DATE:** January 8, 2014

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

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

**SUBJECT: APPROVE MEMORANDUM OF UNDERSTANDING  
MAINTENANCE AND ADMINISTRATIVE SUPPORT UNIT  
TEAMSTERS LOCAL #166**

**FORM MOTION**

Approve Memorandum of Understanding for the Maintenance and Administrative Support Unit between Omnitrans and Teamsters Union Local #166, effective July 1, 2013 through June 30, 2016.

**BACKGROUND**

The Omnitrans Negotiation Team of Ray Maldonado, Employee Relations Manager, Wendy Williams, Director of Marketing, and Jack Dooley, Director of Maintenance began negotiations with the Teamsters Local #166 for the Maintenance and Administrative Support Unit in March 2013. In all, 17 sessions were held. The team successfully negotiated a three year contract for the period of July 1, 2013 through June 30, 2016.

Highlights of the negotiations are as follows:

**ECONOMICS**

- Wages :
  - Year #1: Wages for Yr. 2013-2014: 0.00%
  - Year #2: Wages for Yr. 2014-2015: 2.50%
  - Year #3: Wages for Yr. 2015-2016: 2.75%
- Comprehensive Benefits:
  - Year #1: Maintenance of Benefit increase for Year 2013-2014: \$70.00
  - Year #2: Maintenance of Benefit increase for Year 2014-2015: \$55.00
  - Year #3: Maintenance of Benefit increase for Year 2015-2016: \$50.00



457 (deferred employee compensation plan):

- Year #1: Cap @ \$250.00 per month
- Year #2: Cap @ \$225.00 per month
- Year #3: Cap @ \$200.00 per month

**NON-ECONOMIC**

- Contractual changes: 10 non-economical contractual changes

**FUNDING SOURCE**

The cost associated with this action is included in salary and benefit budget line items of the affected departments.

Departments	1100, 1200, 1400, 1700, 1800
Expenditure Code	Various

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

**CONCLUSION**

As approved by the Board of Directors on December 4, 2013, the \$500 stipend was paid to each member of the Maintenance and Administrative Support Unit upon ratification of the tentative agreement. Changes in both the economic and non-economic business practices to the Memorandum of Understanding will be reviewed to ensure all changes are correctly reflected in the new contract in accordance with the tentative agreement.

PSG:vd

ITEM # F1

**DATE:** January 8, 2014

**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**

The final sbX Partnering Session was held Tuesday, December 17, with Omnitrans, Jacobs, the cities of San Bernardino and Loma Linda, Griffith/Comet JV and the public outreach team. The focus was to review 'lessons learned' and what challenges remain as we near the revenue service date and close out.

The FTA Cost Containment meeting was also held December 17. The review centered on the current status of both the sbX Corridor Project and the Vehicle Maintenance Facility (VMF). At approximately 96 percent complete, the sbX is moving into the integrated testing and start-up phase of the project. The VMF is 40 percent complete, with the Maintenance building being finished first to accommodate the articulated buses, followed by the fueling and wash stations.

### **MONTHLY STATISTICS**

Ridership for November 2013 was 1,272,097 compared to 1,352,701 in November 2012. This is a 5.9 percent decrease from November of last year.

Year-to-date ridership through November 2013 was 6,696,715, which is a decrease of 4.0 percent from last year-to-date. Fixed route ridership decreased by 283,285 passengers year-to-date. Ridership on Access increased by 739 passengers, and OmniLink decreased by 413 passengers. OmniGo ridership was 67,466 year-to-date, which is up 16.9 percent.

Year-to-date pass outlet sales through November 2013 decreased by 27,473 units with 26,469 sold compared to 53,942 last year. This represents a decrease of 50.9 percent. Revenue from bus pass and ticket sales, combined with the Go Smart college program revenue, decreased 6.8 percent through November (\$2,197,510.39 vs. \$2,357,319.85 last year, a decrease of \$159,809.46).

Year-to-date fixed route revenue through November 2013 was \$5,566,015 compared to \$5,595,125 last year, which is a decrease of .52 percent.

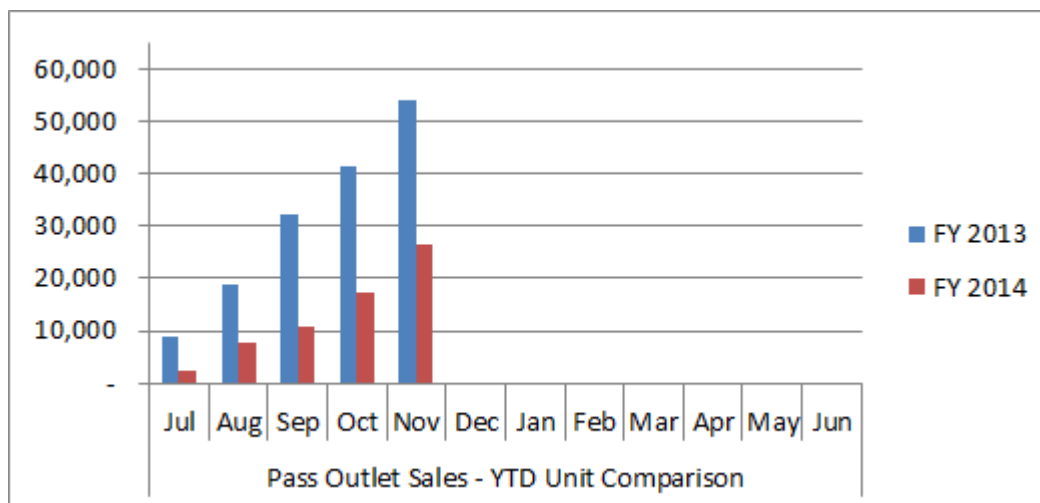
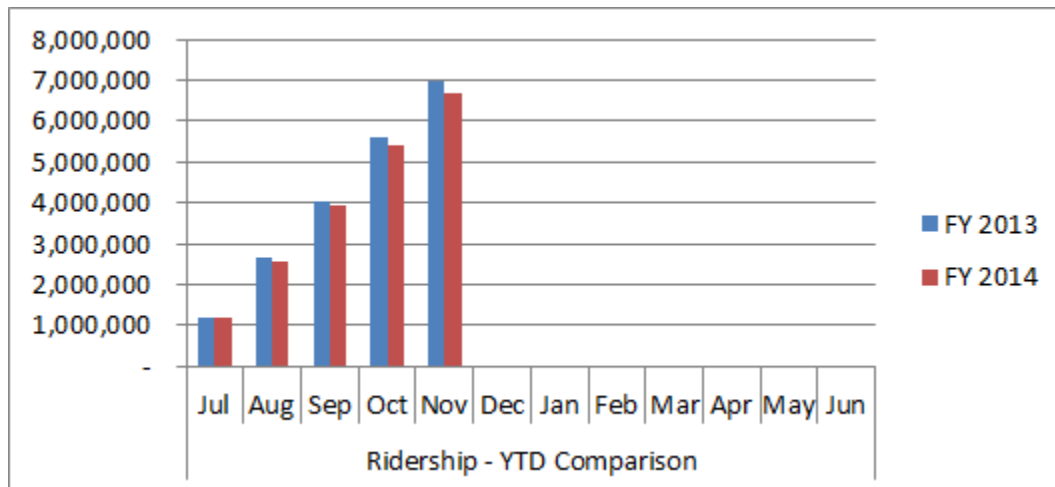
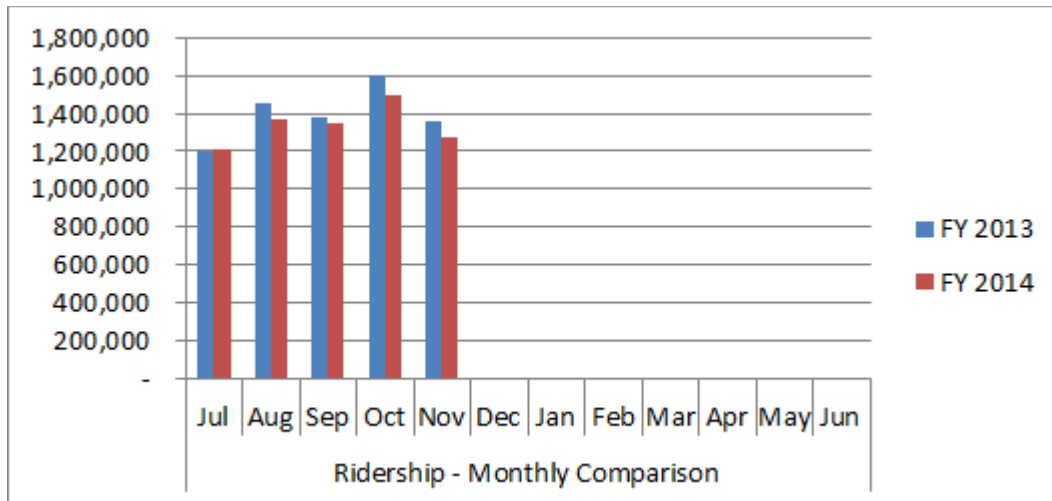
On-time performance for October 2013 was 85.44 percent.

Board Chair Alan Wapner and Members of the Omnitrans Board of Directors  
January 8, 2014 – Page 2

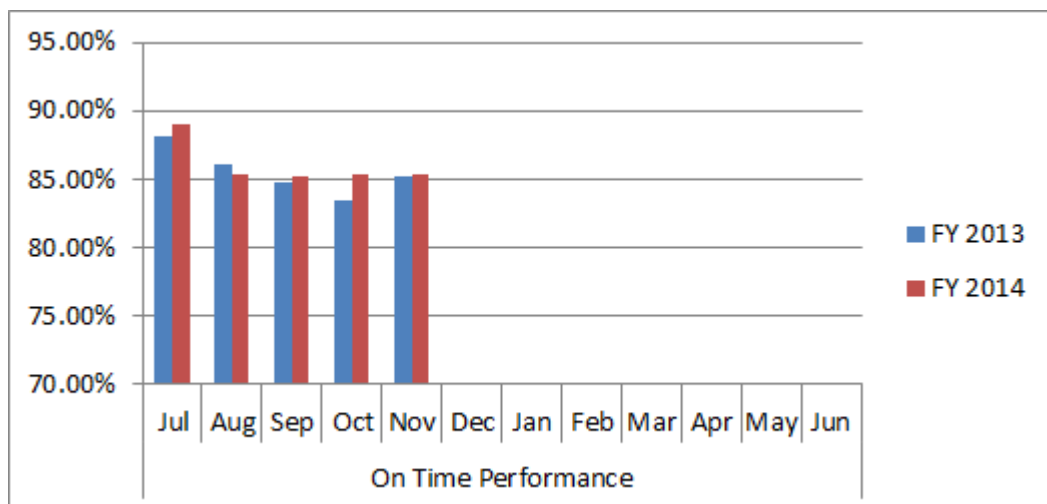
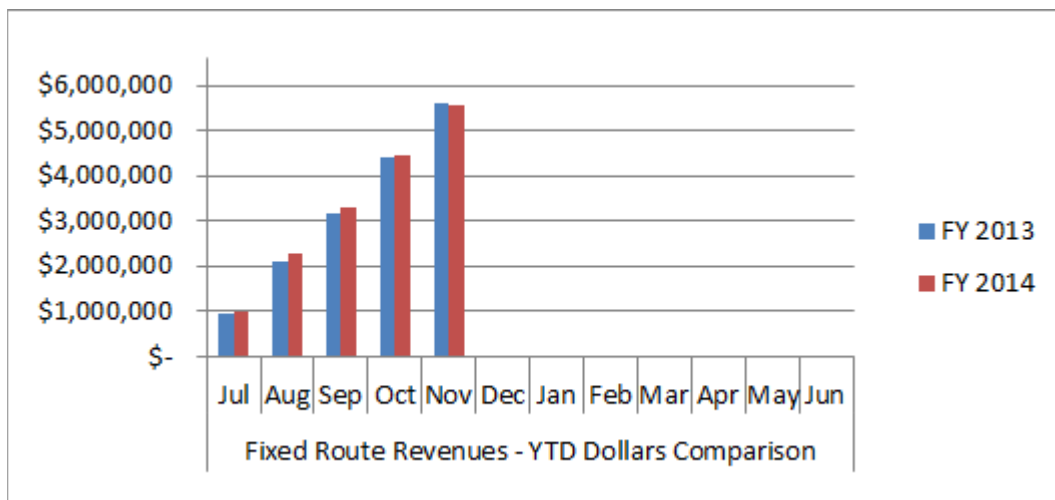
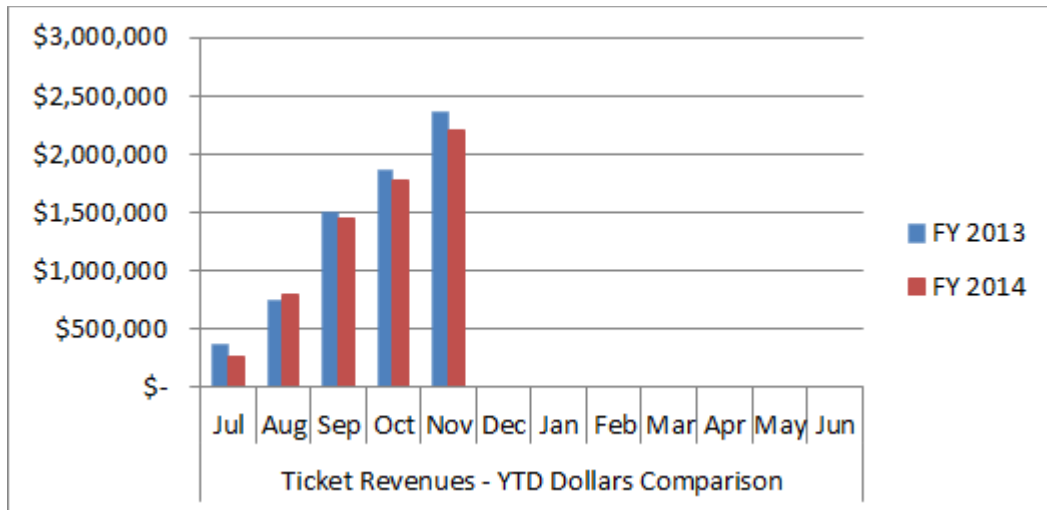
Outreach events in November included: San Bernardino City Unified School District Community Gathering for Excellence, American Lung Association Fight for Air Walk, Anderson School Parent Resource Night, County of San Bernardino Live Well, Age Well Summit, and Travel Training Bus Presentation, Fontana Adult School.

PSG:VD

## CEO/General Manager Report - November 2014



## CEO/General Manager Report - November 2014



ITEM #       F2      

**DATE:** January 8, 2014

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

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

**FROM:** Donald Walker, Director of Finance

**SUBJECT:** **INVESTMENT POLICY STATEMENT FOR 2014**

**FORM MOTION**

Adopt Omnitrans' current Investment Policy Statement to carry forward for the period of January 1, 2014 through December 31, 2014.

**BACKGROUND**

California Government Code Section 53646 requires that each legislative body review and adopt an Investment Policy Statement on an annual basis.

The Investment Policy Statement for 2013 was adopted by the Omnitrans Board of Directors on January 9, 2013. The only changes made to the Investment Policy Statement for calendar year 2014 was the replacement of *Chief Financial Officer* with *Finance Director* in the document (See Attachment). During calendar year 2014, Omnitrans will continue to employ the services of Union Bank for its general banking needs. Union Bank was awarded a five year contract beginning October 1, 2012 and ending no later than September 30, 2017.

At Union Bank, only the projected minimum amount is maintained in the general operating account. Proposition 1B funds are in a Government Managed Rate Account (GMRA). All other available cash funds are invested in the Local Agency Investment Fund (LAIF) in accordance with the Investment Policy Statement.

SG:dw



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## **INVESTMENT POLICY STATEMENT**

**January 1, 2014 – December 31, 2014**

### **1. POLICY**

It is the policy of **OMNITRANS** to invest public funds in a manner which will provide maximum security with the highest investment return while meeting the daily cash flow demands of **OMNITRANS** and conforming to all state and local statutes governing the investment of public funds.

### **2. SCOPE**

This investment policy applies to the cash funds of Omnitrans, except for its employees retirement system fund, which is administered separately by the California Public Employees' Retirement System (PERS) and the 457 Deferred Compensation Fund, administered separately by the International City/County Management Association Retirement Corporation.

These funds include Operating and Capital Funds.

### **3. OBJECTIVE**

Investable funds shall be invested to the maximum extent feasible. The primary goal of the investment program is to maintain safety and liquidity of principal and interest while maximizing returns, minimizing risks and ensuring that funds are available to meet anticipated cash flow requirements.

In the investment of its funds, Omnitrans will be guided by the following principles in order of importance:



3(A) the primary objective is to safeguard investment principal.

- Safety

Safety and the minimizing of risk associated with investing refer to attempts to reduce the potential for loss of principal, interest or a combination of the two. The first level of risk control is found in state law which restricts the particular type of investments permissible for governmental entities. The second level of risk control is reduction of default risk by investing in instruments that appear upon examination to be the most credit worthy. The third level of risk control is reduction of market risk by investing in instruments that have maturities coinciding with planned dates of disbursement, thereby eliminating risk of loss from a forced sale.

3(B) the secondary objective is to maintain sufficient liquidity to ensure that funds are available to meet daily cash flow requirements.

- Liquidity

Liquidity refers to the ability to easily sell at any time with a minimal risk of losing some portion of principal or interest. Liquidity is an important quality for an investment to have, for at any time OMNITRANS may have unexpected or unusual circumstances that result in larger disbursements than expected, and some investments may need to be sold to meet the contingency. Most investments of OMNITRANS are highly liquid.

3(C) the third and last consideration is to achieve a reasonable rate of return or yield consistent with these objectives.

- Yield

Yield is the potential dollar earnings an investment can provide, and also is sometimes described as the rate of return. OMNITRANS attempts to obtain the highest yield possible when selecting an investment, provided that the criteria stated in the Investment Policy for safety and liquidity are met.

#### **4. DELEGATION OF AUTHORITY**

The CEO/General Manager, as the Treasurer of Omnitrans, is hereby authorized to invest or to reinvest the funds of Omnitrans, or to sell or exchange securities purchased all within the meaning, and as limited by the provisions of Government Code Section 53607.

| The ~~Chief Financial Officer~~Finance Director is designated as the Investment Officer of the Agency and is responsible for investment decisions and activities, under the direction of the CEO/General Manager. In the absence of the ~~Chief Financial Officer~~Finance Director, the CEO/General Manager will designate the temporary Investment Officer.

## **5. RESPONSIBILITY OF INVESTMENT OFFICERS**

Cash management and investment transactions are the responsibility of the Investment Officer. The Investment Officer, acting in accordance with written procedures and exercising due diligence, shall not be held personally responsible for a specific security's credit risk or market price changes, provided that these deviations are reported immediately and that appropriate action is taken to control adverse developments.

## **6. INDIVIDUALS AUTHORIZED TO UNDERTAKE INVESTMENT TRANSACTIONS**

The following officials are authorized to implement the cash management and investment transactions decisions of the Investment Officer by undertaking investment transactions on behalf of Omnitrans:

- CEO/General Manager
- ~~Chief Financial Officer~~
- Director of Finance
- Accounting Manager

## **7. PRUDENCE**

Omnitrans operates its cash investments subject to the “Prudent Investor Standard” which obligates a fiduciary to ensure that:

When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the Agency, that a prudent person acting in the like capacity and familiarity with those matters would use in the conduct of funds of the like character and with like aims, to safeguard the principal and maintain the liquidity needs of the Agency.

Within the limitations of this standard and considering individual investments as part of an overall strategy, investments may be acquired as authorized by law.

## **8. SAFEKEEPING**

The investment securities purchased by the Agency shall be held in safekeeping by a designated financial institution, during FY 2002-03 all accounts were moved to Union Bank. The institution shall issue a safekeeping receipt to the Agency listing the specific instrument, rate, maturity and other pertinent information.

Safekeeping procedures shall be reviewed annually by the independent auditor. The independent auditor shall conduct surprise audits of safekeeping and custodial systems.

## **9. ETHICS AND CONFLICTS**

Officers and employees who are directly involved in the investment program shall refrain from personal business activity that could conflict with proper execution of the investment program or which could impair the ability to make impartial investment decisions.

## **10. MONITORING AND ADJUSTING THE PORTFOLIO**

The Investment Officer will routinely monitor the contents of the portfolio, the available markets and the relative values of competing instruments, and will adjust the portfolio accordingly.

## **11. INTERNAL CONTROLS**

Internal controls shall be reviewed annually by the independent auditor. The controls shall be designed to prevent a loss of public funds due to fraud, error, misrepresentation, unanticipated market changes or imprudent actions.

## **12. INVESTMENT PROCEDURES**

The Finance Department is responsible for establishing separate investment procedures which adhere to and implement this Statement of Investment Policy.

## **13. REPORTING REQUIREMENTS**

The Investment Officer shall, under the direction of the CEO/General Manager, generate a monthly report for management purposes which will include, but not be limited to:

- Type of investment
- Institution
- Date of maturity
- Amount of deposit or cost of security
- Rate of interest
- Statement relating the report to the Statement of Investment Policy
- Statement that there are sufficient funds to meet the next 30 days' obligations

## **14. SHORT-TERM VERSUS LONG-TERM PORTFOLIO**

All funds invested for one day to six months shall be considered short-term. Funds invested for a period in excess of six months shall be considered long-term.

## **15. SHORT-TERM PORTFOLIO DIVERSIFICATION**

The Agency will diversify use of investment instruments to avoid incurring unreasonable risk inherent in overinvesting in specific instruments, individual financial institutions or maturities.

Diversification by Instrument:

- U.S. Government Securities, or it's agencies
- Small Business Administration Loans
- Bankers Acceptance

- Commercial Paper
- Negotiable Certificates of Deposits
- Medium Term Notes
- Repurchase Agreements
- Local Agency Investment Fund (LAIF)
- California Asset Management Program (CAMP)
- California Local Agency Securities System (CLASS)

#### **16. Maturity Scheduling:**

- Investment maturities of operating funds shall be scheduled to coincide with projected cash flow needs, taking into account large routine expenditures (e.g. payroll, contractor's payments, lease payments, etc.) and considering sizeable blocks of anticipated revenue (e.g. LTF and Federal operating funds).

#### **17. LONG-TERM PORTFOLIO DIVERSIFICATION**

Instruments and diversification for the long-term portfolio shall be the same type as for the short-term portfolio, but with longer investment periods (over six months).

Maturity scheduling shall be timed according to anticipated needs.

#### **18. AUTHORIZED INVESTMENTS (G.C. 53601)**

The average maturity of Omnitrans' investments should not exceed two-and-one-half years, with no single investment being made for over five years, except with legislative approval as authorized under Section 53601 of the California Government Code. At no time should current cash flow requirements be jeopardized.

Omnitrans may invest in the following legal investments as defined in Section 53601 of the California Government Code: 53601. This section shall apply to a local agency that is a city, a district, or other local agency that does not pool money in deposits or investments with other local agencies, other than local agencies that have the same governing body. However, Section 53635 shall apply to all local agencies that pool money in deposits or investments with other local agencies that have separate governing bodies. The legislative body of a local agency having money in a sinking fund or money in its treasury not required for the immediate needs of the local agency may invest any portion of the money that it deems wise or expedient in those investments set forth below. A local agency purchasing or obtaining any securities prescribed in this section, in a negotiable, bearer, registered, or nonregistered format, shall require delivery of the securities to the local agency, including those purchased for the agency by financial advisers, consultants, or managers using the agency's funds, by book entry, physical delivery, or by third-party custodial agreement. The transfer of securities to the counterparty bank's customer book entry account may be used for book entry delivery. For purposes of this section, "counterparty" means the other party to the transaction. A counterparty bank's trust department or separate safekeeping department may be used for the physical delivery of the security if the security is held in the name of the local agency. Where this section specifies a percentage limitation for a particular category of investment, that percentage is applicable only at the date of purchase. Where this section does not specify a limitation on the term or remaining maturity at the time of the investment, no investment shall be made in any security, other than a security underlying a repurchase or reverse repurchase agreement or securities lending agreement authorized by this

section, that at the time of the investment has a term remaining to maturity in excess of five years, unless the legislative body has granted express authority to make that investment either specifically or as a part of an investment program approved by the legislative body no less than three months prior to the investment:

(a) Bonds issued by the local agency, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency or by a department, board, agency, or authority of the local agency.

(b) United States Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(c) Registered state warrants or treasury notes or bonds of this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency, or authority of the state.

(d) Bonds, notes, warrants, or other evidences of indebtedness of any local agency within this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency.

(e) Federal agency or United States government-sponsored enterprise obligations, participations, or other instruments, including those issued by or fully guaranteed as to principal and interest by federal agencies or United States government-sponsored enterprises.

(f) Bankers acceptances otherwise known as bills of exchange or time drafts that are drawn on and accepted by a commercial bank. Purchases of bankers acceptances may not exceed 180 days' maturity or 40 percent of the agency's money that may be invested pursuant to this section. However, no more than 30 percent of the agency's money may be invested in the bankers acceptances of any one commercial bank pursuant to this section.

This subdivision does not preclude a municipal utility district from investing any money in its treasury in any manner authorized by the Municipal Utility District Act (Division 6 (commencing with Section 11501) of the Public Utilities Code).

(g) Commercial paper of "prime" quality of the highest ranking or of the highest letter and number rating as provided for by a nationally recognized statistical-rating organization (NRSRO). The entity that issues the commercial paper shall meet all of the following conditions in either paragraph (1) or paragraph (2):

(1) The entity meets the following criteria:

(A) Is organized and operating in the United States as a general corporation.

(B) Has total assets in excess of five hundred million dollars (\$500,000,000).

(C) Has debt other than commercial paper, if any, that is rated "A" or higher by a nationally recognized statistical-rating organization (NRSRO).

(2) The entity meets the following criteria:

(A) Is organized within the United States as a special purpose corporation, trust, or limited liability company.

(B) Has program wide credit enhancements including, but not limited to, over collateralization, letters of credit, or surety bond.

(C) Has commercial paper that is rated "A-1" or higher, or the equivalent, by a nationally recognized statistical-rating organization (NRSRO).

Eligible commercial paper shall have a maximum maturity of 270 days or less. Local agencies, other than counties or a city and county, may invest no more than 25 percent of their money in eligible commercial paper. Local agencies, other than counties or a city and county, may purchase no more than 10 percent of the outstanding commercial paper of any single issuer. Counties or a city and county may invest in commercial paper pursuant to the concentration limits in subdivision (a) of Section 53635.

(h) Negotiable certificates of deposit issued by a nationally or state-chartered bank, a savings association or a federal association (as defined by Section 5102 of the Financial Code), a state or federal credit union, or by a state-licensed branch of a foreign bank. Purchases of negotiable certificates of deposit may not exceed 30 percent of the agency's money which may be invested pursuant to this section. For purposes of this section, negotiable certificates of deposit do not come within Article 2 (commencing with Section 53630), except that the amount so invested shall be subject to the limitations of Section 53638. The legislative body of a local agency and the treasurer or other official of the local agency having legal custody of the money are prohibited from investing local agency funds, or funds in the custody of the local agency, in negotiable certificates of deposit issued by a state or federal credit union if a member of the legislative body of the local agency, or any person with investment decision-making authority in the administrative office manager's office, budget office, auditor-controller's office, or treasurer's office of the local agency also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or the supervisory committee of the state or federal credit union issuing the negotiable certificates of deposit.

(i) (1) Investments in repurchase agreements or reverse repurchase agreements or securities lending agreements of any securities authorized by this section, as long as the agreements are subject to this subdivision, including the delivery requirements specified in this section.

(2) Investments in repurchase agreements may be made, on any investment authorized in this section, when the term of the agreement does not exceed one year. The market value of securities that underlay a repurchase agreement shall be valued at 102 percent or greater of the funds borrowed against those securities and the value shall be adjusted no less than quarterly. Since the market value of the underlying securities is subject to daily market fluctuations, the investments in repurchase agreements shall be in compliance if the value of the underlying securities is brought back up to 102 percent no later than the next business day.

(3) Reverse repurchase agreements or securities lending agreements may be utilized only when all of the following conditions are met:

(A) The security to be sold on reverse repurchase agreement or securities lending agreement has been owned and fully paid for by the local agency for a minimum of 30 days prior to sale.

(B) The total of all reverse repurchase agreements and securities lending agreements on investments owned by the local agency does not exceed 20 percent of the base value of the portfolio.

(C) The agreement does not exceed a term of 92 days, unless the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security.

(D) Funds obtained or funds within the pool of an equivalent amount to that obtained from selling a security to a counterparty by way of a reverse repurchase agreement or securities lending agreement shall not be used to purchase another security with a maturity longer than 92 days from the initial settlement date of the reverse repurchase agreement or securities lending agreement, unless the reverse repurchase agreement or securities lending agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security.

(4) (A) Investments in reverse repurchase agreements, securities lending agreements, or similar investments in which the local agency sells securities prior to purchase with a simultaneous agreement to repurchase the security may only be made upon prior approval of the governing body of the local agency and shall only be made with primary dealers of the Federal Reserve Bank of New York or with a nationally or state-chartered bank that has or has had a significant banking relationship with a local agency.

(B) For purposes of this chapter, "significant banking relationship" means any of the following activities of a bank:

- (i) Involvement in the creation, sale, purchase, or retirement of a local agency's bonds, warrants, notes, or other evidence of indebtedness.
- (ii) Financing of a local agency's activities.
- (iii) Acceptance of a local agency's securities or funds as deposits.

(5) (A) "Repurchase agreement" means a purchase of securities by the local agency pursuant to an agreement by which the counterparty seller will repurchase the securities on or before a specified date and for a specified amount and the counterparty will deliver the underlying securities to the local agency by book entry, physical delivery, or by third-party custodial agreement. The transfer of underlying securities to the counterparty bank's customer book-entry account may be used for book-entry delivery.

(B) "Securities," for purpose of repurchase under this subdivision, means securities of the same issuer, description, issue date, and maturity.

(C) "Reverse repurchase agreement" means a sale of securities by the local agency pursuant to an agreement by which the local agency will repurchase the securities on or before a specified date and includes other comparable agreements.

(D) "Securities lending agreement" means an agreement under which a local agency agrees to transfer securities to a borrower who, in turn, agrees to provide collateral to the local agency. During the term of the agreement, both the securities and the collateral are held by a third party. At the conclusion of the agreement, the securities are transferred back to the local agency in return for the collateral.

(E) For purposes of this section, the base value of the local agency's pool portfolio shall be that dollar amount obtained by totaling all cash balances placed in the pool by all pool participants, excluding any amounts obtained through selling securities by way of reverse repurchase agreements, securities lending agreements, or other similar borrowing methods.

(F) For purposes of this section, the spread is the difference between the cost of funds obtained using the reverse repurchase agreement and the earnings obtained on the reinvestment of the funds.



(j) Medium-term notes, defined as all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Notes eligible for investment under this subdivision shall be rated "A" or better by a nationally recognized rating service. Purchases of medium-term notes shall not include other instruments authorized by this section and may not exceed 30 percent of the agency's money that may be invested pursuant to this section.

(k) (1) Shares of beneficial interest issued by diversified management companies that invest in the securities and obligations as authorized by subdivisions (a) to (j), inclusive, or subdivisions (m) or (n) and that comply with the investment restrictions of this article and Article 2 (commencing with Section 53630). However, notwithstanding these restrictions, a counterparty to a reverse repurchase agreement or securities lending agreement is not required to be a primary dealer of the Federal Reserve Bank of New York if the company's board of directors finds that the counterparty presents a minimal risk of default, and the value of the securities underlying a repurchase agreement or securities lending agreement may be 100 percent of the sales price if the securities are marked to market daily.

(2) Shares of beneficial interest issued by diversified management companies that are money market funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.).

(3) If investment is in shares issued pursuant to paragraph (1), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.

(B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience investing in the securities and obligations authorized by subdivisions (a) to (j), inclusive, or subdivisions (m) or (n) and with assets under management in excess of five hundred million dollars (\$500,000,000).

(4) If investment is in shares issued pursuant to paragraph (2), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.

(B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience managing money market mutual funds with assets under management in excess of five hundred million dollars (\$500,000,000).

(5) The purchase price of shares of beneficial interest purchased pursuant to this subdivision shall not include any commission that the companies may charge and shall not exceed 20 percent of the agency's money that may be invested pursuant to this section. However, no more than 10 percent of the agency's funds may be invested in shares of beneficial interest of any one mutual fund pursuant to paragraph (1).

(l) Moneys held by a trustee or fiscal agent and pledged to the payment or security of bonds or other indebtedness, or obligations under a lease, installment sale, or other agreement of a local agency, or certificates of participation in those bonds, indebtedness, or lease installment sale, or other agreements, may be invested in accordance with the statutory provisions governing the issuance of those bonds, indebtedness, or lease installment sale, or other agreement, or to the extent not inconsistent therewith or if there are no specific statutory provisions, in accordance with the ordinance, resolution, indenture, or agreement of the local agency providing for the issuance.

(m) Notes, bonds, or other obligations that are at all times secured by a valid first priority security interest in securities of the types listed by Section 53651 as eligible securities for the purpose of securing local agency deposits having a market value at least equal to that required by Section 53652 for the purpose of securing local agency deposits. The securities serving as collateral shall be placed by delivery or book entry into the custody of a trust company or the trust department of a bank that is not affiliated with the issuer of the secured obligation, and the security interest shall be perfected in accordance with the requirements of the Uniform Commercial Code or federal regulations applicable to the types of securities in which the security interest is granted.

(n) Any mortgage pass-through security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, equipment lease-backed certificate, consumer receivable pass-through certificate, or consumer receivable-backed bond of a maximum of five years' maturity. Securities eligible for investment under this subdivision shall be issued by an issuer having an "A" or higher rating for the issuer's debt as provided by a nationally recognized rating service and rated in a rating category of "AA" or its equivalent or better by a nationally recognized rating service. Purchase of securities authorized by this subdivision may not exceed 20 percent of the agency's surplus money that may be invested pursuant to this section.

53601.1. The authority of a local agency to invest funds pursuant to Section 53601 includes, in addition thereto, authority to invest in financial futures or financial option contracts in any of the investment categories enumerated in that section.

53601.5. The purchase by a local agency of any investment authorized pursuant to Section 53601 or 53601.1, not purchased directly from the issuer, shall be purchased either from an institution licensed by the state as a broker-dealer, as defined in Section 25004 of the Corporations Code, or from a member of a federally regulated securities exchange, from a national or state-chartered bank, from a savings association or federal association (as defined by Section 5102 of the Financial Code) or from a brokerage firm designated as a primary government dealer by the Federal Reserve bank.

53601.6. (a) A local agency shall not invest any funds pursuant to this article or pursuant to Article 2 (commencing with Section 53630) in inverse floaters, range notes, or mortgage-derived, interest-only strips.

(b) A local agency shall not invest any funds pursuant to this article or pursuant to Article 2 (commencing with Section 53630) in any security that could result in zero interest accrual if held to maturity. However, a local agency may hold prohibited instruments until their maturity dates. The limitation in this subdivision shall not apply to local agency investments in shares of beneficial interest issued by diversified management companies registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.) that are authorized for investment pursuant to subdivision (k) of Section 53601.

## **19. DESIGNATED AUTHORIZED INVESTMENTS**

The listing shall be formally designated by Omnitrans and only investments from this designated list will be authorized.

California State Investment Pool (Local Agency Investment Fund or LAIF {Government Code Section 16429.1 – 16429.3}).

California Asset Management Program (CAMP {Government Code Section 6502; Section 53630; Section 53601 and/or 53635}).

California Local Agency Securities System (CLASS {Government Code Section 6502; Section 53630; Section 53601 and/or 53635}).

Whenever possible, bids and offers for any investment security shall be taken from a minimum of two security dealers/brokers, banks, and/or savings and loans. Awards shall be made to the highest responsible bidder or best offer.

All securities purchased must be held in safekeeping by Omnitrans' safekeeping agent, currently Union Bank. The securities shall not be held by the dealer or broker from whom they are purchased. Confirmations for all investments will be reviewed for conformity with the actual transactions. All financial institutions, whether investment banks, dealers, commercial banks or savings and loan institutions must be licensed by the National Association of Security Dealers (NASD) and be approved by the ~~Chief Financial Officer~~ Finance Director before they receive Omnitrans funds or are able to conduct business with Omnitrans. Prior to approval, each financial institution will be physically visited by the ~~Chief Financial Officer~~ Finance Director and/or his/her designee to meet with the principals of the firm and to inspect their offices for stability and financial capabilities. Further, these visitations will continue periodically, preferably annually, on an ongoing basis to ensure eligibility (due diligence). All firms with whom Omnitrans does business will have a strong capital base and be deemed creditworthy before conducting business with such firms. The ~~Chief Financial Officer~~ Finance Director or his/her designee will prescribe minimum standards by which these firms can be judged creditworthy.

Generally, losses are acceptable on a sale of securities prior to maturity and should be taken if (a) the sale proceeds will enhance the overall yield over the life of the new security, or (b) there is a potential imminent risk of principal due to a change in the creditworthiness of the issuer or other factors jeopardizing the propriety or safety and liquidity of public funds.

Where possible, Omnitrans investments shall be placed, confirmed, held, accounted for, and/or audited by different people.

The ~~Chief Financial Officer~~ Finance Director or his/her designee will perform a monthly review of the investment function. This review will consist of:

- Comparison of the investment records to the independent statements and confirmation notices received from brokers, dealers, banks and other financial institutions.
- Review of the contents of the investment portfolio to assure that it conforms with the provisions of this Statement of Investment Policy and the laws of the State of California.
- Review of the financial institutions with whom investments have been made to assure that they have been approved by the ~~Chief Financial Officer~~ Finance Director.

ITEM # F3

**DATE:** January 8, 2014

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

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

**FROM:** Donald Walker, Director of Finance

**SUBJECT:** **APPROVE AMENDMENT NO. 2 – SAP ENTERPRISE RESOURCE PLANNING (ERP) ENHANCEMENT PROJECT**

**FORM MOTION**

Authorize the Interim CEO/General Manager's to execute Amendment No. 2 to Ciber, Inc., Greenwood Village, CO, to include Consultant's travel expenses in the amount of \$14,888 incurred during Phase II of the SAP Enterprise Resource Planning (ERP) Enhancement Project.

**BACKGROUND**

On December 5, 2012, the Omnitrans' Board of Directors authorized the CEO/General Manager to execute contracts for Phase II of the SAP ERP Enhancement Project with SAP America, Inc., (SAP) and Ciber, Inc., to continue fine tuning the existing SAP ERP solution.

The contract awarded to SAP America, Inc. (SAP) was \$1,522,256, plus a 5% contingency for a total of \$1,598,369, and the contract awarded to Ciber, Inc. was \$243,200, plus a 5% contingency for a total of \$255,360, bringing the combined contract total to \$1,853,729. At the end of the Phase II Enhancement Project, SAP was paid \$1,504,388, or \$17,868 less than the approved contract amount, and Ciber was paid the entire approved amount of \$255,360.

However, Omnitrans has invoices totaling \$14,888 for travel expenses incurred by Ciber while performing the Phase II enhancements. These travel expenses were approved by the former Information Technology Director and are now due.

### **FUNDING SOURCE**

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

<b>FUNDING</b>	<b>GRANT</b>	<b>YEAR</b>	<b>PROJECT NAME</b>	<b>INTERNAL ORDER</b>	<b>AMOUNT</b>
FTA	CA-90-Y939	2013	Major Software Applications	D1322002F	\$11,910
STA	10-09-OMN-B	2010	Major Software Applications	K101B201S	\$ 2,978
			<b>Total</b>		<b>\$14,888</b>

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

### **CONCLUSION**

Approval of Amendment No. 2 will enable Omnitrans to reimburse Ciber, Inc., for the travel expenses incurred in performing the Phase II Enhancement Project implementation and will settle all outstanding obligations for the project.

PSG:dw

CONTRACT AMENDMENT NO. 2 TO  
MASTER AGREEMENT MSA MAY 2008,  
SAP LANDSCAPE REVIEW CHANGES  
STATEMENT OF WORK NOVEMBER 15, 2012

BETWEEN  
  
OMNITRANS  
  
AND  
  
CIBER, INC.

*Consultant Services*

This Contract Amendment No. 1, effective \_\_\_\_\_ is entered into by and between Omnitrans (hereinafter called "Omnitrans") and Ciber, Inc (hereinafter called "Consultant").

RECITALS

WHEREAS:

- I. Omnitrans and Consultant have entered into Contract MSA May 2008, SAP Landscape Review Changes Statement of work dated November 15, 2012 and executed December 12, 2012; and
- II. Omnitrans and Contractor amended the Contract under Amendment No. 1 to add travel and per diem costs by Ciber Consultants assigned to the SAP Landscape Review/Enhancement, and to increase the contract by \$12,160;
- III. Omnitrans and Contractor hereby agree to amend the Contract under Amendment No. 2 to increase travel and per diem costs by Ciber Consultants assigned to the SAP Landscape Review/Enhancement, and to increase the contract by \$14,888;

NOW THEREFORE, OMNITRANS and CONTRACTOR hereby amend their Contract as follows:

- IV. Statement of Work, Section 7, Price, page 6, delete in its entirety and replace with:

"This SOW is a fixed price contract and will be invoiced monthly over the course of the project. The total price for the work included in this SOW is \$255,360. Invoicing will be done monthly starting 4 weeks after the beginning of the project. The invoicing schedule is as follows:

Month 1 – \$60,800

Month 2 – \$60,800

Month 3 – \$60,800

Month 4 – \$60,800

Travel and Per Diem Costs for Ciber Consultants – \$27,048

MASTER AGREEMENT MSA MAY 2008,  
SAP LANDSCAPE REVIEW CHANGES  
STATEMENT OF WORK NOVEMBER 15, 2012  
Contract Amendment No. 2

Total - \$270,248

Project expenses for travel, materials, or out-of-pocket expenses will be presented for approval to Omnitrans prior to incurring such expenses. These approved expenses will be reimbursed according to the terms of the Agreement. All travel costs must be accompanied by a receipt and shall be at the suggested GSA rate for the San Bernardino area. These rates can be obtained at <http://www.gsa.gov>.”

IV. As hereby amended, the Contract remains in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Contract Amendment No. 2 effective as of the day and year first therein above written.

OMNITRANS

CIBER, INC.

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

\_\_\_\_\_  
Tim VanWyngarden  
Market Leader West

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE

DP\_\_\_\_\_

CM\_\_\_\_\_



ITEM #       F4      

**DATE:** January 8, 2014

**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 ADM14-12  
STAFF LEGAL SERVICES**

**FORM MOTION**

Authorize the Interim CEO/General Manager to award Contract ADM14-12 to Burke, Williams and Sorensen, LLP, of Riverside, CA, for the provision of Staff Legal Services for a two (2) year base period beginning January 8, 2014 to January 7, 2016, in the amount of \$111,372, and the authority to exercise three (3) single option years in the amount of \$55,686 for each option year to extend the contract no later than January 7, 2019, for a total not-to-exceed amount to \$278,430 should all option years be exercised.

**BACKGROUND**

On October 2, 2013, Omnitrans' Board of Directors authorized the release of Request for Proposals (RFP) RFP-ADM14-12 for Staff Legal Services. Staff released the RFP, published notices in two newspapers of general circulation, posted it on Omnitrans' online bidding system, and distributed it to twenty eight prospective proposers.

Seven proposals were received and all were deemed responsive. The proposals were evaluated in accordance with the criteria set forth in the RFP. The following firms ranked from highest to lowest.

Criteria	Weight Factors	Burke, Williams & Sorensen	Best, Best & Krieger	Meyers/ Nave	Ivie McNeil & Wyatt	Jones & Mayer	Libert, Cassidy Whitmore	Atkinson, Andelson, Loya Ruud & Romo
Responsiveness	15	14.00	14.50	15.00	12.50	13.50	13.00	7.00
Quality of Work	40	37.33	38.67	38.67	36.00	36.00	36.00	34.67
Experience	20	19.33	19.33	19.33	16.00	17.33	16.00	14.67
Overall Cost	25	20.10	18.10	16.80	25.00	22.60	17.50	18.50
<b>Total Scores</b>	<b>100</b>	<b>90.76</b>	90.60	89.80	89.50	89.43	82.50	74.84

Staff requested Best and Final Offers (BAFO) from each firm. Only one firm reduced their pricing, but it had no effect on the results. Staff is recommending award to Burke, Williams & Sorensen, LLC, which is the highest ranking proposal and provides the best value to Omnitrans.

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

### **FUNDING SOURCE**

The cost associated with this procurement is budgeted in the Administration Department Budget as follows:

Department                1300  
Expenditure Code        503060

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

### **CONCLUSION**

Award of this contract will ensure that the Agency has staff legal services to compliment services provided by County Counsel.

PSG:JMS:JC



## CONTRACT AGREEMENT

between

Burke, Williams & Sorensen, LLP  
2280 Market Street, Suite 300  
Riverside, CA 92501

(hereinafter "CONTRACTOR")  
Telephone: (951) 788-0100  
Fax: (951) 788-5785

And

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

### CONTRACT DOCUMENTS

**CONTRACT NO.  
ADM14-12**

**Staff Legal Services**

Contract Amount: \$111,372

#### Omnitrans Project Manager:

Name: Vicki Dennett  
Title: Assistant to CEO/GM  
Telephone: (909) 379-7110  
Email: [vicki.dennett@omnitrans.org](mailto:vicki.dennett@omnitrans.org)

#### Contract Administrator:

Name: Joanne Cook  
Title: Contract Administrator  
Telephone: (909) 379-7198  
Email: [joanne.cook@omnitrans.org](mailto:joanne.cook@omnitrans.org)



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ATTACHMENT A - SCOPE OF WORK  
ATTACHMENT B - REGULATORY REQUIREMENTS  
ATTACHMENT C - PRICING

This Agreement is made and entered into as of this 8<sup>th</sup> day of January, 2013 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and Burke, Williams & Sorensen, LLP (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 January 7, 2016, 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 January 8, 2014 through January 7, 2019, 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 C, and subject to the maximum cumulative payment obligation.

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed One Hundred Eleven Thousand, Three Hundred Seventy Two Dollars (\$111,372), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

### **4. INVOICING AND PAYMENT**

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

CONTRACTOR shall submit invoices in duplicate to:

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

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

- Contract number
- Invoice number
- Description of services
- Delivery Date
- Information as requested by OMNITRANS

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

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

Agreement or any other Agreement between OMNITRANS and CONTRACTOR.

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

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

## **6. NOTIFICATION**

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

To OMNITRANS:

Omnitrans  
1700 West Fifth Street  
San Bernardino, CA 92411  
Attn: Joanne Cook  
Contract Administrator  
[Joanne.cook@omnitrans.org](mailto:Joanne.cook@omnitrans.org)

To CONTRACTOR:

Burke, Williams & Sorensen, LLP  
2280 Market Street, Suite 300  
Riverside, CA 92501  
ATTN: Eric S. Vail  
Partner  
[evail@bwslaw.com](mailto:evail@bwslaw.com)

## **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: Vicki Dennett, Assistant to CEO/GM

1. 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.



2. 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:
  - a. Have general oversight of the Work and this Agreement, including the power to enforce compliance with this Agreement.
  - b. Reserve the right to remove any portion of the Work from CONTRACTOR which have not been performed to OMNITRANS' satisfaction.
  - c. Subject to the review and acceptance by OMNITRANS, negotiate with CONTRACTOR all adjustments pertaining to this Agreement for revision.
3. 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>
<u>Eric S. Vail</u>	<u>Partner</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. 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.

## **9. 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.

10. 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.

11. SUBCONTRACTING

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

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

12. 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.

### 13. 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.

### 14. 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.

## **15. 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.

## **16. 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.

## **17. 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.

## **18. 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.

## **19. 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.

## **20. 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.

## **21. 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.

## **22. 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.

## **23. 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.

#### **24. 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).

#### **25. 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.

#### **26. 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.

#### **27. 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.

## **28. 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.

## **29. 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.

## **30. 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.

### **31. 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.

### **32. 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.

### **33. 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.

### **34. DISPUTE RESOLUTION**

- A. Any disputes between Contractor and Omnitrans relating to the implementation or administration of the Contract shall be resolved in accordance with this section.
- 1) The parties shall first attempt to resolve the dispute informally in meetings or communications between Contractor and Omnitrans.
  - 2) If the dispute remains unresolved fifteen (15) days after it first arises, Contractor 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 Contractor.
  - 3) 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.
  - 4) Pending final resolution of a dispute under this section, Contractor shall proceed diligently with performance in accordance with the Contract and Omnitrans' CEO/General Manager's recommended decision.

### **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 RFP ADM14-12 and (4) CONTRACTOR's proposal dated November 13, 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

BURKE, WILLIAMS & SORENSEN, LLP

\_\_\_\_\_  
P. SCOTT GRAHAM  
Interim CEO/General Manager

\_\_\_\_\_  
ERIC S. VAIL  
Partner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Federal Tax I.D. No. 95-1705973

**SCOPE OF WORK****1. OVERVIEW OF ENGAGEMENT**

OMNITRANS' legal services requirements encompasses a wide variety of legal advice and representation needs typical of any medium-sized public transit agency in California. Such needs may include legal advice on matters pertaining to the Brown Act, ethics, employee relations, relations with collective bargaining groups, conflicts of interest, procurement contract negotiations, public agency contract law, legal oversight over inter-agency agreements, and the interpretation of transportation law under 49 USC and Federal Transit Administration (FTA) regulations under 49 CFR. From time to time, the Agency's staff may request the selected legal firm to assist in the formulation of, and negotiations over, non-standardized contracts for special projects.

**2. MINIMUM QUALIFICATIONS**

Contractor shall:

- A. Have attorneys who are in good standing with the California State Bar and who are available to be dedicated to working on OMNITRANS transactions;
- B. Have a minimum of five (5) non-aggregated years of exhibited satisfactory experience in providing the services required by a California public transit authority or public agency;
- C. Be able to disclose and explain to OMNITRANS' satisfaction if firm has any pending litigation, either civil or criminal, including complaints or actions by any regulatory agencies with jurisdiction over the firms' work, in which any of its partners, members or employees (non-clerical) is or has been involved within the last seven (7) years.

**3. SCOPE OF SERVICES**

- A. Provide customary legal services to OMNITRANS staff in connection with OMNITRANS' day-to-day operations with respect to the R.M. Brown Act; ethics, employee relations, relations with collective bargaining units, conflicts of interest, contract law, legal review and oversight over procurement contracts and all manners of inter-governmental agreements, formulation of language and negotiations over non-standardized contracts for special projects.
- B. As deemed necessary by OMNITRANS, participate in negotiations for procurement contracts, inter-governmental agreements, as well as, other agreements where OMNITRANS considers legal counsel's presence is necessary.
- C. As requested by OMNITRANS' CEO/GM, assists in the handling of and assists in the defense of the AGENCY against grievances, torts, and all other manner of claims against the AGENCY.
- D. Represent the AGENCY at labor arbitrations;
- E. Undertake any necessary research into legal matters affecting the AGENCY and provide advice on a prudent or essential course of action.

- F. Seek, on behalf of OMNITRANS, any necessary opinions, letter rulings or other documentation on legal matters impacting the AGENCY and provide advice on a prudent or essential course of action.

**4. OMNITRANS' POINTS OF CONTACT**

Joanne Cook, Contract Administrator  
1700 West 5<sup>th</sup> Street  
San Bernardino, CA, 94112  
(909) 379-7198

E-Mail: [joanne.cook@omnitrans.org](mailto:joanne.cook@omnitrans.org)

# **ATTACHMENT B**

## **REGULATORY REQUIREMENTS**

**THESE REGULATORY REQUIREMENTS APPLY TO THE  
FOLLOWING DISCUSSION ITEM CONTRACTS**

- |                 |  |
|-----------------|--|
| <b>ITEM #F4</b> | <b>STAFF LEGAL SERVICES</b>  |
| <b>ITEM #F5</b> | <b>ARMORED VEHICLE &amp; FARE COLLECTION<br/>COUNTING SERVICES</b> |
| <b>ITEM #F6</b> | <b>BUS FILTERS</b>   |
| <b>ITEM #F7</b> | <b>LANDSCAPING SERVICES</b>  |
| <b>ITEM #F8</b> | <b>GENFARE EQUIPMENT PARTS AND REPAIR</b>                          |
| <b>ITEM #F9</b> | <b>SUPERVISOR VEHICLE ON-BOARD VIDEO<br/>SURVEILLANCE SYSTEM</b>   |

# **Attachment B**

## **REGULATORY REQUIREMENT**

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## **REGULATORY REQUIREMENTS**

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

### **RR-01**

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

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

This Article applies to all contracts.

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

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

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

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

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

### **RR-02**

#### **DISCRIMINATION \***

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

This Article applies to all contracts.

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

#### **RR-03**

##### **WHISTLEBLOWER REQUIREMENTS \***

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

This Article applies to all contracts.

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

#### **RR-04**

##### **PUBLIC RECORDS ACT \***

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

This Article applies to all contracts.

- B. Except as otherwise provided herein, all records, documents, drawings, plans, specifications, and all other information relating to the conduct of Omnitrans business, including all information and documents submitted by Contractor ("Records"), shall become the exclusive property of Omnitrans and shall be deemed public records. Said Records are subject to the provisions of the California Public Records Act (Government Code §6250 et. seq.). Omnitrans use and disclosure of its records are governed by this Act. Omnitrans will use its best efforts to inform the Contractor of any request for any financial records or documents marked "Trade Secret", "Confidential" or "Proprietary" provided by Contractor to Omnitrans. Omnitrans will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act.
- C. In the event of litigation concerning the disclosure of any Records, Omnitrans sole involvement will be as a stakeholder, retaining the Records until otherwise ordered by a court. The submitting party, at its sole expense and risk, shall be fully responsible for any and all fees for prosecuting or defending any action concerning the Records and shall indemnify and hold Omnitrans harmless from all costs and expenses including attorney's fees in connection with any such action.

## **RR-05**

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

#### **A. Applicability**

This Article applies to all federally funded contracts.

- B. Contractor agrees to provide Omnitrans, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or the FTA's authorized representatives, including any FTA Project Management Oversight Contractor, access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a) 1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- C. If this Contract is for a capital project or improvement (defined at 49 U.S.C. 5302(a) 1) and was entered in to through other than competitive bidding, the Contractor shall make records related to this Contract available to Omnitrans, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- D. Contractor shall permit any of the foregoing parties to reproduce without any cost by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- E. Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until Omnitrans, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

## **RR-06**

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

#### **A. Applicability**

This Article applies to all federally funded contracts.

- B. This Contract includes, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008 and

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

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

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

#### **RR-07**

#### **ENERGY CONSERVATION REQUIREMENTS**

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

This Article applies to all federally funded contracts.

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

#### **RR-08**

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

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

This Article applies to all federally funded contracts.

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

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

C. Equal Employment Opportunity

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

**RR-09**

**NO GOVERNMENT OBLIGATION TO THIRD PARTIES \***

**A. Applicability**

This Article applies to all federally funded contracts.

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

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

**RR-10**

**PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS \***

**A. Applicability**

This Article applies to all federally funded contracts.

- B. The provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, shall apply to actions pertaining to this Contract. Upon execution of this Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining this Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.
- C. Contractor also acknowledges that this Contract is connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307 and if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on Contractor, to the extent the Federal Government deems appropriate.
- D. Contractor shall include this Article in each subcontract financed in whole or in part with Federal assistance provided by FTA. Contractor shall not modify the Article, except to identify the Subcontractor who will be subject to the provisions.

## **RR-11**

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

#### **A. Applicability**

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

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

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

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

## **RR-12**

### **RECYCLED PRODUCTS**

#### **A. Applicability**

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

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

## **RR-13**

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

#### **A. Applicability**

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

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

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

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

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

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

## **RR-14**

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

#### **A. Applicability**

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

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



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

## **RR-15**

### **BUY AMERICA \***

#### **A. Applicability**

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

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

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

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

## **RR-16**

### **CARGO PREFERENCE\***

#### **A. Applicability**

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

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

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

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

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

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

## **RR-17**

### **FLY AMERICA**

#### **A. Applicability**

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

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

## **RR-18**

### **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT \***

#### **A. Applicability**

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

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

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

## **RR-19**

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

#### **Disadvantaged Business Enterprises**

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

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

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

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

## **RR-20**

### **ADA ACCESS**

#### **A. Applicability**

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

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

Contractor shall comply with:

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

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

## **RR-21**

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

#### **A. Applicability**

This Article applies to federally funded contracts for transit operations.

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

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

**C. Certificate of Compliance**

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

**D. Drug and Alcohol Testing Program**

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

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

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

**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 Construction Manager.

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

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

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

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

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

## **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**  
**ADM14-12 - PRICING**  
**STAFF LEGAL SERVICES**

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**HOURLY RATE**

**A. STANDARD HOURLY  
BILLING RATES**

<b>1) Partners</b>	<b>\$260 PER HOUR</b>
<b>2) Associates</b>	<b>\$230 PER HOUR</b>
<b>3) Paralegals</b>	<b>\$150 PER HOUR</b>

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ITEM # F5

**DATE:** January 8, 2014

**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 FIN14-38  
ARMORED VEHICLE & FARE COLLECTION COUNTING SERVICES**

### **FORM MOTION**

Authorize the Interim CEO/General Manager to award Contract FIN14-38 to Los Angeles Federal Armored Services, Inc., of Los Angeles, CA, for the provision of Armored Vehicle & Fare Collection Counting Services for a two (2) year base period beginning January 8, 2014 to January 7, 2016, in the amount of \$258,388, and the authority to exercise three (3) single option years in the amount of \$129,194 each, to extend the contract to no later than January 7, 2019, plus a ten percent contingency of \$64,597, for a total not-to-exceed amount to \$710,567.

### **BACKGROUND**

On October 2, 2013, Omnitrans' Board of Directors authorized the release of Request for Proposals RFP-FIN14-38 for Armored Vehicle & Fare Collection Counting Services. Staff released the RFP, published notices in two newspapers of general circulation, posted on Omnitrans online bidding system, and distributed to ten perspective bidders.

Two proposals were received and were deemed responsive. The proposals were evaluated in accordance with the criteria listed in the RFP. The following companies ranked from highest to lowest.

Criteria	Weight Factors	LA Federal Armored Services, Inc.	Sectran Security Inc.
Responsiveness	10	9.00	8.00
Quality of Work	40	34.67	33.33
Experience	15	13.00	12.50
References	15	15.00	15.00
Overall Cost	20	18.00	20.00
<b>Total Scores</b>	100	<b>89.67</b>	88.83

Staff requested Best and Final Offers (BAFO) from each firm. Pricing remained unchanged and therefore had no effect on the final result. Staff is recommending award to Los Angeles Federal

Armored Services, Inc. which is the highest ranking proposal and provides the best value to Omnitrans.

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

### **FUNDING SOURCE**

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

Department	1800
Expenditure Code	503260

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

### **CONCLUSION**

Award of this agreement will ensure the required security transportation services continue.

PSG:JMS:jc



## CONTRACT AGREEMENT

between

LOS ANGELES FEDERAL ARMORED  
SERVICES, INC.  
676 S. Mateo Street  
Los Angeles, CA 90021

(hereinafter "CONTRACTOR")  
Telephone: (213) 624-2646  
Fax: (213) 624-2670

And

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

### CONTRACT DOCUMENTS

**CONTRACT NO.**  
**FIN14-38**

**Armored Vehicle & Fare Collection  
Counting Services**

Contract Amount: \$258,388

#### Omnitrans Project Manager:

Name: Donald Walker  
Title: Director of Finance  
Telephone: (909) 379-7131  
Email: [donald.walker@omnitrans.org](mailto:donald.walker@omnitrans.org)

#### Contract Administrator:

Name: Joanne Cook  
Title: Contract Administrator  
Telephone: (909) 379-7198  
Email: [joanne.cook@omnitrans.org](mailto:joanne.cook@omnitrans.org)





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ATTACHMENT A – SCOPE OF WORK

ATTACHMENT B – REGULATORY REQUIREMENTS

ATTACHMENT C – PRICING

This Agreement is made and entered into as of this 8th day of January, 2014 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and Los Angeles Federal Armored Services, Inc. (hereinafter referred to as "CONTRACTOR").

## **RECITALS**

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

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

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

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

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

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

The term of this Agreement shall be from the date of execution of this Agreement and continue in effect through January 7, 2016, 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 January 8, 2014 through January 9, 2019 which period encompasses the Initial Term.

### **3. CONTRACT SUM**

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

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Two Hundred Fifty Eight Thousand, Three Hundred Eighty Eight Dollars (\$258,388), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

### **4. INVOICING AND PAYMENT**

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

CONTRACTOR shall submit invoices in duplicate to:

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

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

- Contract number
- Invoice number
- Description of services
- Delivery Date
- Information as requested by OMNITRANS

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

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

Agreement or any other Agreement between OMNITRANS and CONTRACTOR.

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

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

## **6. NOTIFICATION**

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

To OMNITRANS:

Omnitrans  
1700 West Fifth Street  
San Bernardino, CA 92411  
Attn: Joanne Cook  
Contract Administrator  
[Joanne.cook@omnitrans.org](mailto:Joanne.cook@omnitrans.org)

To CONTRACTOR:

Los Angeles Federal Armored  
Services, Inc.  
676 South Mateo Street  
Los Angeles, CA 90021  
ATTN: Anthony Ash  
Sr. Vice President  
[aash@laarmored.com](mailto:aash@laarmored.com)

## **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: Donald Walker, Director of Finance

1. 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.

2. 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:
- a. Have general oversight of the Work and this Agreement, including the power to enforce compliance with this Agreement.
  - b. Reserve the right to remove any portion of the Work from CONTRACTOR which have not been performed to OMNITRANS' satisfaction.
  - c. Subject to the review and acceptance by OMNITRANS, negotiate with CONTRACTOR all adjustments pertaining to this Agreement for revision.
3. 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>
<u>Anthony Ash</u>	<u>Senior Vice President</u>
<u></u>	<u></u>
<u></u>	<u></u>
<u></u>	<u></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. 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.

## **9. 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.

## **10. 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.

## **11. SUBCONTRACTING**

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

<b>Subcontractor's Name and Address</b>	<b>Work to Be Performed</b>
N/A	N/A
_____	_____
_____	_____

## **12. 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.

### 13. 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.

### 14. 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.

## **15. 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.

## **16. 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.

## **17. 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.

## **18. 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.

## **19. 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.

## **20. 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.

## **21. 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.

## **22. 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.

**23. 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.

**24. 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).

**25. 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.

**26. 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.

## **27. 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.

## **28. 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.

## **29. 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.

### **30. 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.

### **31. 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.

### **32. 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.

### **33. 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.

#### **34. DISPUTE RESOLUTION**

- A. Any disputes between Contractor and Omnitrans relating to the implementation or administration of the Contract shall be resolved in accordance with this section.
- 1) The parties shall first attempt to resolve the dispute informally in meetings or communications between Contractor and Omnitrans.
  - 2) If the dispute remains unresolved fifteen (15) days after it first arises, Contractor 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 Contractor.
  - 3) 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.
  - 4) Pending final resolution of a dispute under this section, Contractor shall proceed diligently with performance in accordance with the Contract and Omnitrans' CEO/General Manager's recommended decision.

#### **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 RFP FIN14-38 and (4) CONTRACTOR's proposal dated October 30, 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

LOS ANGELES FEDERAL ARMORED  
SERVICES, INC.

\_\_\_\_\_  
P. SCOTT GRAHAM  
Interim CEO/General Manager

\_\_\_\_\_  
ANTHONY ASH  
Senior Vice President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Federal Tax I.D. No. 95-4751557

# **ATTACHMENT A**

## **SCOPE OF WORK**

**FIN14-38**

**ARMORED TRANSPORTATION & FARE  
COLLECTION COUNTING SERVICES**

## Scope of Work

### Armored Transportation & Fare Collection Counting Services

#### 1. Introduction and Project Overview

Omnitrans is a Joint Powers Agency (JPA) created in 1976 to provide public mass transit services to 16 member jurisdictions located in Southeastern San Bernardino County. Omnitrans operates fixed route bus service directly utilizing a fleet of approximately 170 full-size buses. Omnitrans also provides paratransit, and dial-a-ride services through a private operator.

The fleet of 170 buses collects approximately \$8.7 million in cash bus fares annually. On a nightly basis, each bus farebox collection data is downloaded, and the secured cashbox is removed from the farebox and dumped into a vault. Both the cashbox and vault are chambered with currency on one side and coins on the other side. The vault is housed in a metal receiver for added security.

There are two facility locations for which the Armored Transportation and Fare Collection Counting is required. The locations are:

1. Omnitrans (East Valley – EV)  
1700 W. 5<sup>th</sup> Street  
San Bernardino, CA 92411
2. Omnitrans (West Valley – WV)  
4748 Arrow Highway  
Montclair, CA 91763

On a daily basis, Monday through Sunday, farebox data is downloaded and cashboxes are dumped into the vaults at both locations. Both locations have two (2) receivers each. The Contractor is required to remove full vaults from receivers, replace with an empty vault, and transport full vaults to the Contractor's counting facility.

The Contractor counts the collections, prepares deposits, and transports the deposits to a designated banking facility. Omnitrans also prepares miscellaneous deposits at its Administration building located at 1700 W. 5<sup>th</sup> Street, San Bernardino, CA that must be transported to a designated banking facility.

The Contractor will transport vaults on an as needed basis for repairs and maintenance. The Contractor also transports cashbox on an as needed basis for auditing purposes.

#### 2. Security Transportation Services – Vaults and Cashboxes

- a. The Contractor shall pick up Monday - Friday, at least two (2) vaults per day, five days per week between the hours of 8:00 a.m. – 11:00 a.m. The vaults are housed in steel

## Armored Transportation &amp; Fare Collection Counting Services

receivers located on the service island of Omnitrans' EV facility located at 1700 W. 5<sup>th</sup> Street, San Bernardino, CA 92411. (See **Exhibit A**)

- b. The Contractor shall pick Monday and Thursday, at least two (2) vaults per day, two days per week between the hours of 8:00 a.m. – 11:00 a.m. The vaults are housed in steel receivers located on the service island of Omnitrans' WV facility located at 4748 Arrow Highway, Montclair, CA 91763.
- c. The full vaults shall be removed from the receivers.
- d. The receivers shall be loaded with an empty vault.
- e. Full vaults shall be transported from Omnitrans' location to the Contractor's counting facility on the same day as the pickup.
- f. Vault exchanges must begin no earlier than 8:00 a.m. and must be completed before 11:00 a.m.
- g. Occasionally the Contractor shall be required to transport a cashbox from Omnitrans' WV facility to Omnitrans' EV facility for auditing purposes. Afterwards the cashbox shall be returned to the WV facility. (See **Exhibit B**)
- h. Occasionally the Contractor shall be required to transport a vault from Omnitrans' WV facility to Omnitrans' EV facility for repairs. Afterwards the vault shall be returned to the WV facility. Contractor may be asked to provide special pick-ups for jammed vaults or other extra work.
- i. Transportation of vaults between Omnitrans' locations and Contractor's counting facilities is required Monday through Friday, *including some holidays*.
- j. The Contractor shall have possession of keys for the locked receivers and vaults and shall be held accountable for the keys and be financially responsible for the cost of replacement or re-keying the locking mechanisms should their integrity be compromised.
- k. The Contractor shall immediately notify designated Omnitrans staff of any incident that occurs at any Omnitrans facility. Incidents include security issues, lack of access to service island vaults, equipment failures, equipment damage, or any other event that is out of the ordinary. The Contractor shall provide a written incident report to Omnitrans within twenty-four hours of the verbal notification.
- l. Omnitrans reserves the right to change the transport schedules at no additional cost to accommodate month-end accounting needs. Omnitrans shall provide adequate notification of any schedule change no less than five (5) days prior to the change.

### 3. Armored Vehicle Services – Deposits

- a. The Contractor shall transport deposits from the Contractor's counting facilities to designated depositories on a daily basis, Monday through Friday, excluding bank holidays.
- b. The Contractor shall pick up miscellaneous deposits as necessary from Omnitrans' Finance Department located on the 2<sup>nd</sup> floor of the Administration building at 1700 W. 5<sup>th</sup> Street, San Bernardino, CA 92411. The pickup shall be between 8:00 a.m. and 11:00 a.m. The deposits shall be transported to a designated depository on the same day for same day credit.
- c. Omnitrans reserves the right to change the transport schedules at no additional charge to accommodate operational needs. Omnitrans shall provide written notification of any schedule change no less than five (5) days prior to the change.

### 4. Armored Vehicle Staff

- a. The Contractor's employees providing armored vehicle services for Omnitrans must be armed and in the Contractor's standard uniform for armed guards.
- b. The Contractor's employees providing armored vehicle services for Omnitrans must carry security guard cards and weapon permits.
- c. The Contractor's employees providing armored vehicle services for Omnitrans must wear a ***high visibility safety vest*** at all times outside of the armored vehicle.
- d. The Contractor's employees providing armored vehicle services for Omnitrans must have satisfactory criminal background checks and driving records.
- e. The Contractor shall provide a current list of employees authorized to perform services for Omnitrans. The list shall include specimen signatures and current photographs of the individuals. The list must be updated for new employees prior to that person providing service to Omnitrans. The list shall be delivered to Omnitrans' Finance Department located on the 2<sup>nd</sup> floor of the Administration building at 1700 W. 5<sup>th</sup> Street, San Bernardino, CA.
- e. The Contractor shall assume total responsibility and liability for its staff while providing armored vehicle services.

### 5. Armored Vehicle

- a. Armored vehicles used to transport Omnitrans vaults, cashboxes, and funds must conform to standard requirements for armored vehicles in the State of California.

## Armored Transportation &amp; Fare Collection Counting Services

- b. Armored vehicle(s) used to transport vaults must have the capacity to transport no less than four (4) vaults each day and no less than two (2) cashboxes. Each vault is approximately 38 inches wide, 39 inches deep and 70 inches tall. Each cashbox is approximately 7 ½ inches wide, 6 ½ inches deep and 17 ½ inches tall. An empty vault weighs approximately 600 pounds; a full vault weighs approximately 1,200 pounds. Weight is distributed on four swivel wheels. An empty cashbox weighs approximately 17 pounds; a full vault weighs approximately 30 pounds.
- c. Each vehicle used to transport vaults requires a hydraulic lift with safety rails. A minimum 5,000-pound capacity is required. The lift gate shall be equipped with anchor pins and safety chains compatible in size and rating to the lift gate's maximum lifting capacity.
- d. The Contractor is responsible for all damages to the vaults and cashboxes incurred in the pickup and transport. This includes, but is not limited to, the electronic components and metal materials incorporated into the construction of the vaults and cashboxes. The Contractor shall be responsible for the cost of repair or replacement should the vault or cashbox be damaged beyond repair. The approximate replacement cost of a vault is \$15,000 and approximately \$3,000 for a cashbox.

**6. Coin and Paper Currency Counting Service**

- a. Farebox collections shall be delivered to the Contractor's counting facility in vaults via armored vehicle.
- b. The Contractor shall be responsible for counting farebox collections, preparing deposits, and reporting summary information back to Omnitrans.
- c. All deposits must have delivery manifests with daily summaries. Copies of deposit slips and delivery manifest shall be delivered to Omnitrans' Finance Department located on the 2<sup>nd</sup> floor of the Administration building at 1700 W. 5<sup>th</sup> Street, San Bernardino, CA.
- d. The Contractor shall empty the vaults so that empty vaults can be returned to the appropriate Omnitrans facility during the next pickup.
- e. The contents of each vault must be segregated with the contents identified by vault number, location, and date of pickup.
- f. At all times, coin and paper currency must be under dual custodianship and under video surveillance.
- g. The Contractor must provide a secure facility at which the fare collections will be counted. The Offeror's proposal should detail the components of security that will be provided at the counting facility. The Offeror should be prepared to provide Omnitrans staff with a tour of its counting facility.

- h. The Contractor shall count and prepare the money for deposit in accordance with requirements of the designated depository.
- i. Deposit slips shall be prepared and submitted with each deposit taken to the designated depository. A copy of the deposit slip shall be submitted to Omnitrans within 24 hours of the actual deposit.
- j. Coins and paper currency must be deposited no later than the depository's cutoff time on the second business day following the day the vault was picked up for counting.
- l. The Contractor shall provide its own deposit supplies (plastic bags, wrappers, rubber bands, etc.), except for deposit slips.

## 7. Collection Information

- a. Omnitrans anticipates collecting at least \$8.7 million per year from bus fares. The average breakdown by denomination in the previous fiscal year was as follows:

Denomination	Quantity	Monthly Value	Yearly Value	Percent of Value
\$1	421,713	\$421,713	\$5,060,556	57.76%
\$2	187	\$374	\$4,488	0.05%
\$5	12,868	\$64,340	\$772,080	8.81%
\$10	2,389	\$23,890	\$286,680	3.27%
\$20	95	\$1,900	\$22,800	0.26%
<b>Subtotals</b>	<b>437,252</b>	<b>\$512,217</b>	<b>\$6,146,604</b>	<b>70.16%</b>
Coins	1,320,055	\$217,884	\$2,614,608	29.84%
<b>Totals</b>	<b>1,757,307</b>	<b>\$730,101</b>	<b>\$8,761,212</b>	<b>100.00%</b>

## 8. Locations

1. East Valley Facility ( EV) - 1700 West 5<sup>th</sup> Street, San Bernardino, CA 92411
2. West Valley Facility (WV) – 4748 Arrow Highway, Montclair, CA 91763

**EXHIBIT A**

**Vault #4570**

70 inches x 38 inches x 39 inches





**EXHIBIT A**

**Vault #4570**

70 inches x 38 inches x 39 inches



**EXHIBIT A**

**Vault #4570**

70 inches x 38 inches x 39 inches



**EXHIBIT B**

**Cashbox**

17 ½ inches x 7 ½ inches x 6 ½ inches



**EXHIBIT B**

**Cashbox**

17 ½ inches x 7 ½ inches x 6 ½ inches



**EXHIBIT B**

**Cashbox**

17 ½ inches x 7 ½ inches x 6 ½ inches



**FIN14-38  
ATTACHMENT C**

**ARMORED VEHICLE & FARE COLLECTION COUNTING SERVICES  
PRICE SUMMARY SHEET**

Prices shall include direct costs, indirect costs, tax and profits.					
<b>Armored Vehicle Services - Monthly</b>					
	<b>Base Years 1 and 2</b>		<b>Option Year 1</b>	<b>Option Year 2</b>	<b>Option Year 3</b>
<b>Description</b>	<b>2/1/2014 to 1/31/2015</b>	<b>2/1/2015 to 1/31/2016</b>	<b>2/1/2016 to 1/31/2017</b>	<b>2/1/2017 to 1/31/2018</b>	<b>2/1/2018 to 1/31/2019</b>
Transport money bins between locations and counting facilities	\$3,800	\$3,800	\$4,000	\$4,000	\$4,000
Transport deposits from counting facilities to depositories	\$800	\$800	\$800	\$800	\$800
Transport deposits from Omnitrans to bank	\$75	\$75	\$75	\$75	\$75
<b>ANNUAL TOTALS</b>	\$56,100	\$56,100	\$58,500	\$58,500	\$58,500
<b>Fare Counting Services – Rates Per Hundred</b>					
	<b>Base Years 1 and 2</b>		<b>Option Year 1</b>	<b>Option Year 2</b>	<b>Option Year 3</b>
<b>Description</b>	<b>2/1/2014 to 1/31/2015</b>	<b>2/1/2015 to 1/31/2016</b>	<b>2/1/2016 to 1/31/2017</b>	<b>2/1/2017 to 1/31/2018</b>	<b>2/1/2018 to 1/31/2019</b>
Coin Counting Services	\$.20	\$.20	\$.22	\$.22	\$.20
Currency Counting Services	\$.99	\$.99	\$.99	\$.99	\$.99
<b>Additional Services as stated in the Scope of Work – Hourly Rates</b>					
	<b>Base Years 1 and 2</b>		<b>Option Year 1</b>	<b>Option Year 2</b>	<b>Option Year 3</b>
<b>Description</b>	<b>2/1/2014 to 1/31/2015</b>	<b>2/1/2015 to 1/31/2016</b>	<b>2/1/2016 to 1/31/2017</b>	<b>2/1/2017 to 1/31/2018</b>	<b>2/1/2018 to 1/31/2019</b>
Standard Hourly Rates	\$90	\$90	\$90	\$90	\$90
Premium Hourly Rates	\$105	\$105	\$105	\$105	\$105



ITEM # F6

**DATE:** January 8, 2014

**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 (BENCH) - CONTRACT MNT13-107R (A-C)  
BUS FILTERS**

### **FORM MOTION**

Authorize the Interim CEO/General Manager to award Contract MNT13-107R-A to H&H Auto Parts Wholesale, Inc. of Arleta, CA; Contract MNT13-107R-B to Vehicle Maintenance Program, Inc., of Boca Raton, FL; and Contract MNT13-107R-C to Muncie Reclamation and Supply dba Muncie Transit Supply, Inc. of Muncie, IN, for the provision of Bus Filters for an initial three year period beginning February 1, 2014 and ending no later than January 31, 2017, and the authority to exercise two (2) single option years to extend the contract to no later than January 31, 2017, in an aggregate not to exceed amount of \$225,000 for the initial base period and \$75,000 for each of the two option years, totaling \$150,000, for a total aggregate amount of \$375,000, plus a 10 percent contingency of \$37,500, for a total not-to-exceed amount of \$412,500, should all option years be exercised.

### **BACKGROUND**

On April 3, 2013, Omnitrans' Board of Directors authorized the release of Invitation for Bids IFB-MNT13-107 for the provision of Bus Filters for the existing fleet. Solicitation IFB-MNT13-107 was cancelled and reissued on November 6, 2013 as IFB-MNT13-107R to add salient characteristics as required by FTA C 4220.1F

Staff released the IFB, notices were published in two local newspapers of general circulation and posted on Omnitrans' online bidding which was distributed to one hundred thirty one potential bidders.

Seventeen bids were received electronically by the deadline of December 3, 2013. Four bids were found to be responsive. Award is being made to the lowest three responsive and responsible bidders. The Independent Cost Estimate was \$451,652.

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

### **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)

### **CONCLUSION**

Award of these contracts will provide continued supply of filters necessary to maintain Omnitrans' fleet.

PSG:JMS:AA





## CONTRACT AGREEMENT

between

### CONTRACTOR

H&H Auto Parts Wholesale, Inc.  
12860 Muscatine Street  
Arleta, CA 91331

(hereinafter "CONTRACTOR")  
Telephone: 818-771-0926  
Fax: 818-771-0464  
Email: [Jim@hhparts.com](mailto:Jim@hhparts.com)

And

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

### CONTRACT DOCUMENTS

**CONTRACT NO. MNT13-107R-A**

### BUS FILTERS

Contract Amount: \$10,000.00

### Omnitrans Project Manager:

Name: Mike Bonacio  
Title: Technical Services Manager  
Telephone: (909) 379-7179  
Fax: (909) 885-7482  
Email: [mike.bonacio@omnitrans.org](mailto:mike.bonacio@omnitrans.org)

### Contract Administrator:

Name: Alesia Atkinson  
Title: Contract Administrator  
Telephone: (909) 379-7314  
Fax: (909) 379-7107  
Email: [alesia.atkinson@omnitrans.org](mailto:alesia.atkinson@omnitrans.org)



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ATTACHMENT A SCOPE OF WORK

ATTACHMENT B REGULATORY REQUIREMENTS

ATTACHMENT C PRICING

This Agreement is made and entered into as of this 1ST day of February, 2014 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and H&H Auto Parts Wholesale, Inc (hereinafter referred to as "CONTRACTOR").

## **RECITALS**

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

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

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

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

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

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

The term of this Agreement shall be from the date of execution of this Agreement and continue in effect through January 31, 2017, 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 February 1, 2017 Through January 31, 2019, 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 C, and subject to the maximum cumulative payment obligation.

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Ten Thousand and Dollars (\$10,000.00), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

### **4. INVOICING AND PAYMENT**

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

CONTRACTOR shall submit invoices in duplicate to:

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

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

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

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

In the event OMNITRANS should overpay CONTRACTOR, such overpayment shall not be construed as a waiver of OMNITRANS' right to

obtain reimbursement for the overpayment. Upon discovering any overpayment, either on its own or upon notice of OMNITRANS, CONTRACTOR shall immediately reimburse OMNITRANS the entire overpayment or, at its sole discretion, OMNITRANS may deduct such overpayment amount from monies due to CONTRACTOR under this Agreement or any other Agreement between OMNITRANS and CONTRACTOR.

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

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

## **6. NOTIFICATION**

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

### **To OMNITRANS:**

Omnitrans  
1700 West Fifth Street  
San Bernardino, CA 92411  
Attn: Alesia Atkinson  
Contract Administrator

### **To CONTRACTOR:**

H&H Auto Parts Wholesale, Inc.  
12860 Muscatine Street  
Arleta, CA 91331  
Attn: Jim Holmquist, President

## **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: Mike Bonacio, Technical Services Manager.

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

**B. Contractor's Key Personnel**

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

<u>Name</u>	<u>Role</u>
Jim Holmquist	President
_____	_____
_____	_____
_____	_____

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

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

**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
n/a	
<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.*

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.

### **34. DISPUTE RESOLUTION**

- A. Any disputes between Contractor and Omnitrans relating to the implementation or administration of the Contract shall be resolved in accordance with this section.

- 1) The parties shall first attempt to resolve the dispute informally in meetings or communications between Contractor and Omnitrans.
- 2) If the dispute remains unresolved fifteen (15) days after it first arises, Contractor 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 Contractor.
- 3) 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.
- 4) Pending final resolution of a dispute under this section, Contractor shall proceed diligently with performance in accordance with the Contract and Omnitrans' CEO/General Manager's recommended decision.

### **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) Attachment B, Regulatory Requirements, (4) Attachment C, Rates, (5) provisions of IFB-MNT13-107R and (4) CONTRACTOR's proposal dated 12-03-2013 .

**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

H&H AUTO PARKS WHOLESALE, INC

\_\_\_\_\_  
P. SCOTT GRAHAM  
Interim CEO/General Manager

\_\_\_\_\_  
JIM HOLMQUIST  
PRESIDENT

\_\_\_\_\_  
DATE

Federal Tax I.D. No. 95-4051321

DP \_\_\_\_\_

CM \_\_\_\_\_

## **Attachment A – Scope of Work**

### **1. Background**

Omnitrans maintains a fleet of Cummins and John Deere powered New Flyer buses and Thomas buses with Allison C-4, Voith DIWA, Voith .5 DIWA, and ZF Ecomat transmissions. Fit, Form, and Function of the Technical Specifications of Attachment A, Scope of Work are described as the engines the filters will be used for.

#### **A. Technical Requirements**

1. All filters (or related products such as gaskets and O-rings) shall be new, meet or exceed O.E.M. requirements and conform to all applicable industry and safety standards, including but not limited to: Cummins and John Deere engines, Allison, Voith, and ZF transmissions.
2. All items shall meet or exceed the following standards:  
All filters: SAE J1124, SAE J363  
Air filters: SAE J1533, SAE J2554, and ISO TS 11155-1, with an efficiency rating of 98% or greater using these standards.  
Fuel filters: SAE J905, SAE J1989, SAE J1488, SAE J1985, and be compatible with unleaded gasoline and ultra-low sulfur diesel.  
Oil filters: SAE HS 806, SAE J806, SAE J1858  
Hydraulic filters: SAE J2066, SAE J931.  
Contractor must also be able to supply filters with a two micron rated filter for any application which calls for a two micron filter.
3. The contractor shall notify Omnitrans if any of the aforementioned standards are changed, superseded or when new industry standards are set.
4. When requested, the vendor shall provide Omnitrans with the ratings (micron, burst pressure, flow rate, beta, etc.) and specifications of filters.
5. Manufacturer's standard warranty shall commence the date the part is placed in service, not the delivery date, unless product has a previously specified shell life. All items purchased under this Contract shall be guaranteed for a minimum of one (1) year from purchase against any defects by the manufacturer with full credit given, including shipping charges.
6. Consequential damages to be included in Warranty. For Example: An engine oil filter element disintegrates and destroys an engine. How will this be covered? What process is taken to identify how a failed part affected or didn't

affect the overall failure of the engine? Warranty claims will be submitted by Omnitrans within twenty-one calendar days of failure. Adjustments, credits, or refunds will be completed within thirty days of notification of the part failure. Refunds will be made by check or account credit, payable to Omnitrans, 1700 W. Fifth Street, San Bernardino, CA 92411-2401.

7. In the event that warranty adjustments for a part failure cannot be resolved by mutual agreement between the successful bidder and Omnitrans' Warranty Coordinator, a meeting will be set up with the vendor, Omnitrans' Maintenance Manager, Senior Buyer, Warranty Coordinator, and Director of Maintenance.
8. The contractor shall provide a Material Safety Data Sheet (MSDS) for all products containing any toxic items that may be harmful to the end user or environment.

## **B. Delivery**

1. Contractor shall maintain adequate inventory of items contained in this BID to continuously supply Omnitrans for the term of the contract. Omnitrans will maintain a sufficient number of spare filters to insure continuous operation of the fleet.
2. Contractor shall ship requested filters within 3 working days after receipt of order for normal delivery and same day for expedited (overnight, 2<sup>nd</sup> day, etc...) delivery.
3. The Contractor shall package the product(s) in such a manner as to prevent damage during shipment, receiving and storage. The Contractor shall also ensure that shipped product(s) are not damaged. Any damaged product(s) discovered upon receipt at FOB point will be returned for credit or replacement at no cost to Omnitrans.
4. Omnitrans will not pay any premium handling charges related to expedited shipping. Omnitrans shall pay for direct and actual freight charges. Omnitrans reserves the right to request proof of freight charges or validate referenced charges independently.
5. A packing slip (with related P.O. number) shall accompany all deliveries.
  - a. Deliveries shall be made to Omnitrans prepaid F.O.B. destination.  
Delivery Location: Omnitrans East Valley  
1700 West 5<sup>th</sup> Street, San Bernardino, CA 92411

## **C. Warranty Provision**

1. Coverage. All products supplied are warranted to be free from defects for one year beginning on the date of installation or acceptance, except as specified below. The Contractor must submit their written standard limited warranty guarantee(s) for Omnitrans' review upon request.
  - a. The warranty shall start from the date the equipment is returned to service after the product has been installed. Omnitrans' Warranty Coordinator shall show date of installation /acceptance or proof of purchase receipt to qualify for warranty coverage.
  - b. Any supplier or manufacturer's standard limited warranty coverage greater than that specified above must also be extended to Omnitrans.
2. Limitations. Warranty coverage shall not apply to failures that have been caused or contributed by the following:
  - a. Improper: use, servicing, maintenance, inspection and testing.
  - b. Failure to comply with OEM's operating, maintenance, servicing, inspection and testing requirements.
  - c. Use of inadequate, improper or incompatible component(s).
  - d. Accident, negligence, abuse, not caused by Contractor or OEM.
  - e. Unauthorized modification of equipment affecting design or performance characteristics.
  - f. Use of non-approved products as specified by the OEM.
3. Repair Procedures
  - a. The Contractor is responsible for all warranty-related work. To the extent practicable, Omnitrans will allow the Contractor or its designated representative to perform such work. At its discretion, Omnitrans may perform such work if it determines it needs to do so based on transit service or other requirements. The Contractor shall reimburse such work.
  - b. The Contractor or its designated representative shall begin work on warranty-related repairs, within forty-eight 48 hours after receiving notification of a defect from Omnitrans. Omnitrans shall as much as possible, accommodate the Contractor's schedule to complete repairs.
  - c. The Contractor shall provide at its own expense, all spare products and tools required for repairs. At Omnitrans' option, the Contractor may be required to remove the equipment from Omnitrans' property while repairs are being affected. If the equipment is removed from Omnitrans' property, the Contractor's representative must diligently pursue repair procedures.

- d. When Omnitrans performs the warranty-related repairs, it shall correct or repair the defect and any related defects utilizing products supplied by the Contractor specifically for this repair. At its discretion, Omnitrans may use Contractor-specified products available from its own stock if deemed in its best interest. Monthly, or at a period to be mutually agreed upon, reports of all repairs covered by this warranty may be submitted by Omnitrans to the Contractor for reimbursement or replacement of products. The Contractor shall provide forms for these reports when required.
  - e. Omnitrans may require the Contractor to supply new products for warranty related repairs being performed by Omnitrans. These products shall be shipped prepaid to Omnitrans from any source selected by the contractor within three (3) working days of receipt of the request for said products. Products supplied by the Contractor shall be Original Equipment Manufacturer (OEM) or approved equal.
- 4. Servicing
 

The Contractor may be requested to provide field service support for the correction of warranty failures as required by Omnitrans.
- 5. Claims
  - a. All warranty defects and failures will be submitted to the Contractor as a Omnitrans warranty claims. The Contractor shall notify Omnitrans of receipt and/or status of the claim.
  - b. The Contractor must notify Omnitrans in writing the disposition of a warranty claim within 15 days of receipt.
  - c. The Contractor must resolve all open warranty claims within 60 days after receipt. If the warranty claim is not resolved within the stated time frame the Contractor will be informed of Omnitrans' intent to automatically credit Omnitrans' accounts payable for the Contractor with the amount of the open claim.
  - d. The Contractor is required to notify the Omnitrans' Warranty Coordinator on the disposition of products within five (5) days after Omnitrans' request for a Return Material Authorization (RMA).
- 6. Remedies
 

Contractor shall promptly repair, replace and/or pay for all warranty defects including products, labor, and shipping and handling. The Contractor shall also reimburse for any progressive, compensatory and consequential damages or fines due to product failures.

7. Reimbursement

- a. Contractor is required to reimburse Omnitrans for cost associated with a warranty repair claim or service request.
- b. The product costs shall be based on the most current supplier contract price or the invoiced price for replacement.
- c. The labor repair times shall be fair and reasonable and based on current OEM or industry Standard Repair Time (SRT) guidelines or an agreed upon repair time standard.

8. Systemic/Fleet Defects

During the warranty period, when repairs or modifications necessitated by defective design, material, or workmanship occur to an extent in excess of 20% of the product (used for the same function in the same system or subsystem), the Contractor shall promptly furnish all necessary labor and material to effect such repairs and modifications for every product delivered under the contract, according to the terms and conditions outlined, including systems or subsystems in which the product has not yet failed.

9. Administration. Warranty claims, and other warranty issues shall be administered, coordinated and resolved with the Omnitrans' Warranty Coordinator and a Contractor's assigned representative.

- a. For warranty repair claims or service requests which are determined by the Contractor not to be under warranty, the Contractor must forward a written failure analysis report and an itemized quote to Omnitrans' Warranty Coordinator and obtain an authorizing purchase order before proceeding with the repair.
- b. The Contractor shall be able to electronically communicate on warranty coverage, registrations, claims, service requests and bulletins/alerts.
- c. The Contractor is required to reference the Omnitrans warranty purchase order and warranty claim number when shipping warranty replacement products.
- d. The Contractor is required to properly identify warranty returns or replacement products with a bill of lading.



Technical Specifications					
Ln	Omnitrans Material #:	Manufacturer Part #	Item Description	Fit, Form, & Function	Est Annual Usage*
1	7146	LF3000	Combination Lube Oil Filter	Cummins 8.3	98
2	11221		Transmission Filter	Cummins 5.9, Cummins 8.9, John Deere 8.1	12
3	34926	ACNF, MZCQ, MZGW+2045.5E	New Flyer 21.75" x 46.5" Air Conditioning Filter	John Deere 8.1, Cummins 8.3, Cummins 8.9	2316
4	36467	17X46.E5, MZGW+1746.5E	Thomas /17" x 46.5" Air conditioning Filter	Cummins 5.9	224
5	21329	RE57394	Oil Filter	John Deere 8.1	216
6	38174	3937743, BT7339, BT7349, LF3959, TBB7339	Thomas 5.9 Oil Filter	Cummins 5.9	504
7	41285	RE524713, CCV55304-08	John Deere Crankcase Breather Filter	John Deere 8.1	486
8	41806	46644, AF1867, DN-P155842, LAF1745, PA2751	Thomas Air Filter	Cummins 5.9	24
9	41939	51546, D6567301, HF-6173, HF-7983, HF6173, LFH8534, P171602, TBB-D6567301, BT366-10	Thomas Hydraulic Filter	Cummins 5.9	20
10	58982	83804E	Power Steering Hydraulic Filter Element	Cummins 8.3	26
11	104109	750131003, 4139298038, 4139298936, C0601903AB, LH8640, PT8385	ZF Transmission Filter	Cummins 8.3, John Deere 8.1	144
12	198143	NG5900	Spin-On Secondary Fuel Filter	Cummins 8.1, 8.3, 8.9	316
13	216007	LF9009	Engine Oil Filter	Cummins 8.9	426
14	216123	6303161, 83284B, 57317	Power Steering Hydraulic Filter Element	Cummins 8.9	152
15	218516		Air Intake Secondary Filter	Cummins 8.9	12

\*No guarantee of usage or order quantities

## Attachment C- Rates

## Unit Price

Item Num	Section	Item Code	Description	Unit of Measure	Quantity	H&H Wholesale Parts
6	Main Bid	38174	CUMMINS,THOMAS 5.9 OIL FILTER	EA	504	\$3.05
9	Main Bid	41939	THOMAS HYDRAULIC FILTER	EA	20	\$6.58

3% INCREASE FOR BASE &amp; OPTION YRS



## CONTRACT AGREEMENT

between

### CONTRACTOR

Vehicle Maintenance Program, Inc.  
3595 N. Dixie Highway, Bay #7  
Boca Raton, FL 33431

(hereinafter "CONTRACTOR")  
Telephone: 561-362-6080  
Fax: 561-362-7994  
Email: [Lindi@vmpparts.com](mailto:Lindi@vmpparts.com)

And

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

### CONTRACT DOCUMENTS

**CONTRACT NO. MNT13-107R-B**

### **BUS FILTERS**

Contract Amount: \$10,000.00

### Omnitrans Project Manager:

Name: Mike Bonacio  
Title: Technical Services Manager  
Telephone: (909) 379-7179  
Fax: (909) 885-7482  
Email: [mike.bonacio@omnitrans.org](mailto:mike.bonacio@omnitrans.org)

### Contract Administrator:

Name: Alesia Atkinson  
Title: Contract Administrator  
Telephone: (909) 379-7314  
Fax: (909) 379-7107  
Email: [alesia.atkinson@omnitrans.org](mailto:alesia.atkinson@omnitrans.org)



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ATTACHMENT A SCOPE OF WORK

ATTACHMENT B REGULATORY REQUIREMENTS

ATTACHMENT C PRICING

This Agreement is made and entered into as of this 1ST day of February, 2014 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and Vehicle Maintenance Program, Inc (hereinafter referred to as "CONTRACTOR").

## **RECITALS**

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

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

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

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

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

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

The term of this Agreement shall be from the date of execution of this Agreement and continue in effect through January 31, 2017, 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 February 1, 2017 Through January 31, 2019, 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 C, and subject to the maximum cumulative payment obligation.

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Ten Thousand Dollars (\$10,000.00), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

### **4. INVOICING AND PAYMENT**

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

CONTRACTOR shall submit invoices in duplicate to:

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

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

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

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

In the event OMNITRANS should overpay CONTRACTOR, such overpayment shall not be construed as a waiver of OMNITRANS' right to

obtain reimbursement for the overpayment. Upon discovering any overpayment, either on its own or upon notice of OMNITRANS, CONTRACTOR shall immediately reimburse OMNITRANS the entire overpayment or, at its sole discretion, OMNITRANS may deduct such overpayment amount from monies due to CONTRACTOR under this Agreement or any other Agreement between OMNITRANS and CONTRACTOR.

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

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

## **6. NOTIFICATION**

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

### **To OMNITRANS:**

Omnitrans  
1700 West Fifth Street  
San Bernardino, CA 92411  
Attn: Alesia Atkinson  
Contract Administrator

### **To CONTRACTOR:**

Vehicle Maintenance Program, Inc.  
3595 N. Dixie Hwy, Bay # 7  
Boca Raton, FL 33431  
Attn: Lindi Brooks, Director, Sales &  
Marketing



## **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: Mike Bonacio, Technical Services Manager.

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

**B. Contractor's Key Personnel**

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

<u>Name</u>	<u>Role</u>
Linda Brooks	Director, Sales & Marketing
_____	_____
_____	_____
_____	_____

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
n/a	

## 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.*

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.

### **34. DISPUTE RESOLUTION**

- A. Any disputes between Contractor and Omnitrans relating to the implementation or administration of the Contract shall be resolved in accordance with this section.

- 1) The parties shall first attempt to resolve the dispute informally in meetings or communications between Contractor and Omnitrans.
- 2) If the dispute remains unresolved fifteen (15) days after it first arises, Contractor 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 Contractor.
- 3) 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.
- 4) Pending final resolution of a dispute under this section, Contractor shall proceed diligently with performance in accordance with the Contract and Omnitrans' CEO/General Manager's recommended decision.

### **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) Attachment B, Regulatory Requirements (4), Attachment C, Rates, (5) provisions of IFB-MNT13-107R and (6) CONTRACTOR's proposal dated 12-03-2013.

**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

VEHICLE MAINTENANCE PROGRAM, INC

\_\_\_\_\_  
P. SCOTT GRAHAM  
Interim CEO/General Manager

\_\_\_\_\_  
LINDI BROOKS  
DIRECTOR, SALES & MARKETING

\_\_\_\_\_  
DATE

Federal Tax I.D. No. 95-4051321

DP \_\_\_\_\_

CM \_\_\_\_\_

## Attachment C- Rates

## Unit Price

Item Num	Section	Item Code	Description	Unit of Measure	Quantity	Vehicle Maintenance Program, Inc.
5	Main Bid	21329	NEW FLYER JOHNDEER 8.1 OIL FILTER	EA	216	\$7.86
8	Main Bid	41806	THOMAS ,5.9 CUMMINS AIR FILTER	EA	24	\$23.72
14	Main Bid	216123	NEW FLYER SERIES SR1337 PS/HYD FILTER ELEMENT	EA	152	\$6.56

3.5% INCREASE FOR BASE &amp; OPTION YRS



## CONTRACT AGREEMENT

between

### CONTRACTOR

Muncie Reclamation and Supply dba  
Muncie Transit Supply, Inc.  
3720 S. Madison Street  
Muncie, IN 47302

(hereinafter "CONTRACTOR")  
Telephone: 765-288-1971  
Fax: 765-213-3325  
Email: [bhuff@abc-companies.com](mailto:bhuff@abc-companies.com)

And

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

### CONTRACT DOCUMENTS

**CONTRACT NO. MNT13-107R-C**

### BUS FILTERS

Contract Amount: \$10,000.00

### Omnitrans Project Manager:

Name: Mike Bonacio  
Title: Technical Services Manager  
Telephone: (909) 379-7179  
Fax: (909) 885-7482  
Email: [mike.bonacio@omnitrans.org](mailto:mike.bonacio@omnitrans.org)

### Contract Administrator:

Name: Alesia Atkinson  
Title: Contract Administrator  
Telephone: (909) 379-7314  
Fax: (909) 379-7107  
Email: [alesia.atkinson@omnitrans.org](mailto:alesia.atkinson@omnitrans.org)



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ATTACHMENT A SCOPE OF WORK

ATTACHMENT B REGULATORY REQUIREMENTS

ATTACHMENT C PRICING

This Agreement is made and entered into as of this 1ST day of February, 2014 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and Muncie Reclamation and supply dba Muncie Transit Supply, Inc. (hereinafter referred to as "CONTRACTOR").

## **RECITALS**

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

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

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

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

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

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

The term of this Agreement shall be from the date of execution of this Agreement and continue in effect through January 31, 2017, 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 February 1, 2017 Through January 31, 2019, 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 C, and subject to the maximum cumulative payment obligation.

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Ten Thousand Dollars (\$10,000.00), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

### **4. INVOICING AND PAYMENT**

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

CONTRACTOR shall submit invoices in duplicate to:

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

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

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

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

In the event OMNITRANS should overpay CONTRACTOR, such overpayment shall not be construed as a waiver of OMNITRANS' right to

obtain reimbursement for the overpayment. Upon discovering any overpayment, either on its own or upon notice of OMNITRANS, CONTRACTOR shall immediately reimburse OMNITRANS the entire overpayment or, at its sole discretion, OMNITRANS may deduct such overpayment amount from monies due to CONTRACTOR under this Agreement or any other Agreement between OMNITRANS and CONTRACTOR.

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

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

## **6. NOTIFICATION**

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

### **To OMNITRANS:**

Omnitrans  
1700 West Fifth Street  
San Bernardino, CA 92411  
Attn: Alesia Atkinson  
Contract Administrator

### **To CONTRACTOR:**

Muncie Reclamation and Supply dba  
Muncie Transit Supply  
3720 S. Madison Street  
Muncie, IN 47302  
Attn: Steve Prince, Transit Pricing  
Manager

## **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: Mike Bonacio, Technical Services Manager.

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

**B. Contractor's Key Personnel**

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

<u>Name</u>	<u>Role</u>
Steve Prince	Transit Pricing Manager
_____	_____
_____	_____
_____	_____

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

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

**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
n/a	

## 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.*

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.

### **34. DISPUTE RESOLUTION**

- A. Any disputes between Contractor and Omnitrans relating to the implementation or administration of the Contract shall be resolved in accordance with this section.

- 1) The parties shall first attempt to resolve the dispute informally in meetings or communications between Contractor and Omnitrans.
- 2) If the dispute remains unresolved fifteen (15) days after it first arises, Contractor 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 Contractor.
- 3) 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.
- 4) Pending final resolution of a dispute under this section, Contractor shall proceed diligently with performance in accordance with the Contract and Omnitrans' CEO/General Manager's recommended decision.

### **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) Attachment B, Regulatory Requirements (4), Attachment C, Rates, (5) provisions of IFB-MNT13-107R and (6) CONTRACTOR's proposal dated 12-02-2013.

**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

Muncie Reclamation and Supply  
DBA Muncie Transit Supply, Inc.

\_\_\_\_\_  
P. SCOTT GRAHAM  
Interim CEO/General Manager

\_\_\_\_\_  
Steve Prince  
Transit Pricing Manager

\_\_\_\_\_  
DATE

Federal Tax I.D. No. 95-4051321

DP \_\_\_\_\_

CM \_\_\_\_\_

## Attachment C- Rates

Unit Price

Item Num	Section	Item Code	Description	Unit of Measure	Quantity	MUNCIE TRANSIT SUPPLY
2	Main Bid	11221	NEW FLYER B400, THOMAS B300 TRANSMISSION FILTER	EA	12	\$28.95
7	Main Bid	41285	JOHNDEER, CRANKCASE BREATHER FILTER	EA	486	\$23.95
10	Main Bid	58982	NEW FLYER SERIES SR813 PS/HYD FILTER ELEMENT	EA	26	\$5.59
11	Main Bid	104109	NEW FLYER SERIES SR813-SR842 ZF TRANS FILTER	EA	144	\$19.95
15	Main Bid	218516	NEW FLYER SERIES SR1677 AIR INTAKE SECONDARY FILTER	EA	12	\$35.35

3% INCREASE FOR BASE &amp; OPTION YRS

ITEM # F7

**DATE:** January 8, 2014

**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 MNT14-13  
LANDSCAPING SERVICES**

**FORM MOTION**

Authorize the Interim CEO/General Manager to award Contract MNT14-13 to RP Landscape and Irrigation of San Bernardino, CA, for the provision of Landscaping Services, in the amount of \$158,148, for a three year base period beginning January 12, 2014 and ending no later than January 11, 2017, and the authority to exercise two single option years of \$65,088 each, plus a ten percent contingency of \$28,832, bringing the total not-to-exceed amount of \$317,156.

**BACKGROUND**

On November 6, 2013, Omnitrans' Board of Directors authorized the release of Invitation for Bids IFB-MNT14-13 for the provision of Landscaping Services for East Valley, West Valley, "I" Street, and "J" Street lot. Beginning approximately January 2015, the sbX Green Line Corridor and park and rides will also be serviced as part of this award.

Staff released the IFB, notices were published in two local newspapers of general circulation and posted on Omnitrans' online bidding which was distributed to twenty-one potential bidders.

Three bids were received electronically by the deadline date of December 5, 2013. All bids were found to be responsive.

Listed below are the bid prices:

Company	Bid
RP Landscaping & Irrigation	\$288,324.00
Epic Pest Control & Landscaping Services, Inc.	\$322,080.00
Advanced Environmental Landscape Design & Consulting, LLC	\$441,262.80

A protest was received on December 6, 2013, stating that the apparent low bidder did not meet the minimum licensing requirements. Omnitrans' Procurement Policy 5000 – Protest Policy, prohibits Omnitrans from making an award prior to the resolution of a protest filed before contract award. An ad hoc Agency Protest Review Panel conducted an investigation and found the protest to be without merit. Therefore, staff recommends award to RP Landscape & Irrigation, the lowest responsive and responsible bidder. The price is considered fair and reasonable as it is \$8,344 less than the Independent Cost Estimate of \$325,500.

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 Number	1200
Expenditure Code	505210

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

### **CONCLUSION**

Award of this contract will ensure aesthetically maintained facilities.

PSG:JMS:AA



## CONTRACT AGREEMENT

between

CONTRACTOR  
RP Landscaping & Irrigation  
PO Box 1200  
San Bernardino, CA 92402  
  
(hereinafter "CONTRACTOR")  
Telephone: 909-889-9987  
Fax: 909-889-9897  
Email: rplandsapeinc@aol.com

### CONTRACT DOCUMENTS

**CONTRACT NO. MNT14-13**

### **LANDSCAPING SERVICES**

And

Contract Amount: \$158,148.00

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

Omnitrans Project Manager:  
Name: Mark Montgomery  
Title: Facility Manager  
Telephone: (909) 379-7175  
Fax: (909) 885-2441  
Email:  
[mark.montgomery@omnitrans.org](mailto:mark.montgomery@omnitrans.org)

Contract Administrator:  
Name: Alesia Atkinson  
Title: Contract Administrator  
Telephone: (909) 379-7314  
Fax: (909) 379-7107  
Email: [alesia.atkinson@omnitrans.org](mailto:alesia.atkinson@omnitrans.org)



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ATTACHMENT A - SCOPE OF WORK

ATTACHMENT B - REGULATORY REQUIREMENTS

ATTACHMENT C - PRICING

ATTACHMENT D - sbX Drawings

This Agreement is made and entered into as of this 13th day of January, 2014 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and RP Landscape & Irrigation (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 January 12, 2017 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 January 13, 2017 Through January 12, 2019, 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 C, and subject to the maximum cumulative payment obligation.

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Two Hundred Eighty Eight Thousand Three Hundred Twenty Four Dollars and 00/100 ( \$288,324.00), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

### **4. INVOICING AND PAYMENT**

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

CONTRACTOR shall submit invoices in duplicate to:

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

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

- Contract number
- Invoice number
- Description of service
- Service Date
- Information as requested by OMNITRANS

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

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

Agreement or any other Agreement between OMNITRANS and CONTRACTOR.

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

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

## **6. NOTIFICATION**

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

To OMNITRANS:

Omnitrans  
1700 West Fifth Street  
San Bernardino, CA 92411  
Attn: Alesia Atkinson,  
Contract Administrator

To CONTRACTOR:

RP Landscape & Irrigation  
PO Box 1200  
San Bernardino, CA 92402  
Attn: Roy Perez, Owner

## **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: Mark Montgomery, Facilities Supervisor.

- a. Except as expressly specified in this Agreement, the Contracting Officer may exercise any powers, rights and/or privileges that have been lawfully delegated by OMNITRANS. Nothing in this Agreement should be construed to bind OMNITRANS for acts of its officers, employees, and/or agents that exceed the delegation of authority specified herein.

- b. The Contracting Officer has delegated to the Project Manager certain powers and duties in connection with this Agreement. The Project Manager is the authorized representative of the Contracting Officer for matters related to this Agreement. The Project Manager or his/her designee is empowered to:
  1. Have general oversight of the Work and this Agreement, including the power to enforce compliance with this Agreement.
  2. Reserve the right to remove any portion of the Work from CONTRACTOR which has 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>
Roy Perez	Owner
_____	_____
_____	_____
_____	_____

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
n/a	

### 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.*

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.

### **34. DISPUTE RESOLUTION**

- A. Any disputes between Contractor and Omnitrans relating to the implementation or administration of the Contract shall be resolved in accordance with this section.
  - 1) The parties shall first attempt to resolve the dispute informally in meetings or communications between Contractor and Omnitrans.
  - 2) If the dispute remains unresolved fifteen (15) days after it first arises, Contractor 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 Contractor.
  - 3) 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.
  - 4) Pending final resolution of a dispute under this section, Contractor shall proceed diligently with performance in accordance with the Contract and Omnitrans' CEO/General Manager's recommended decision.

### **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) Attachment B, Regulatory Requirements, (4) provisions of IFB-MNT14-13 and (5) CONTRACTOR's proposal dated December 4, 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

RP LANDSCAPE & IRRIGATION

\_\_\_\_\_  
P. SCOTT GRAHAM  
Interim CEO/General Manager

\_\_\_\_\_  
ROY PEREZ  
Owner

\_\_\_\_\_  
DATE

Federal Tax I.D. No. 33-0953297

DP \_\_\_\_\_

CM \_\_\_\_\_

Attachment A – Scope of Work

**1. INTRODUCTION AND PROJECT OVERVIEW**

**A. INTRODUCTION**

- 1) Contractor will provide the Landscaping services for Omnitrans' East Valley, West Valley, "T" Street, and "J" Street properties, and the future sbX corridor.

**B. BACKGROUND**

- 1) Omnitrans is a Joint Powers Authority (JPA) created in 1976 to provide public transit services to 16 member jurisdictions located in southeastern San Bernardino County.
- 2) Omnitrans was created to provide comprehensive public transportation service. Omnitrans serves a 480 square mile area bordered by the Los Angeles County line, the Riverside County Line, and the San Bernardino and San Gabriel Mountains. Approximately 1.2 million people reside in this service area.
- 3) Omnitrans' transit operations are conducted from three (3) separate facilities in the San Bernardino Valley, and along the sbX corridor. Locations are as follows:

**a) East Valley Facility (City of San Bernardino)**

- (1) Located at 1700 West Fifth Street, San Bernardino, CA 92411.
- (2) 12.7 acre Administrative Offices and Maintenance Facility

**b) West Valley Facility (City of Montclair)**

- (1) Located at 4748 Arrow Highway, Montclair, CA 91763.
- (2) 5.5 acre Operations and Maintenance Facility.

**c) East Valley Paratransit Facility (City of San Bernardino)**

- (1) Located at 234 South "T" Street, San Bernardino, CA 92410
- (2) 4.7 acre Operations and Vehicle Maintenance complex.



**d) “J” Street lot (City of San Bernardino)**

- (1) This property is adjacent to the East Valley paratransit facility located at 234 South “I” Street, San Bernardino, CA 92410.
- (2) 2.2 acre empty dirt lot completely fenced with gate access.

**e) sbX Corridor (City of San Bernardino)**

- (1) The 15.7-mile corridor spans between northern San Bernardino and Loma Linda. It will include 16 art-inspired stations at key university, government, business, entertainment and medical centers as well as four park-and-ride facilities.
- (2) Responsibility is to maintain the landscape and irrigation at the stations and park & rides areas only. In total there are 4 park and rides with stations (Palm/Kendall, Marshall West, Marshall East, and Anderson/Redlands); 2 single side running stations (CSUSB and Benton/Barton); 6 pair of side running stations (Kendall/Little Mountain, Kendall/Shandin Hills, E Street/Highland, E Street/Baseline, Anderson/Redlands, and Anderson/Prospect); and 6 single center running stations (E Street/Court, E Street/Rialto, E Street/North Mall, Hospitality/Hunts, Hospitality/Carnegie, and Hospitality/Tippecanoe). *See drawings attached for actual locations.*
- (3) *Note: The sbX corridor will not be phased in until January 2015.*

**2. SCOPE OF SPECIFICATIONS**

**A. Landscaping Services**

- 1) **General.** These specifications describe once weekly landscaping maintenance for Omnitrans’ East Valley, West Valley and “I” Street Properties. The lot at “J” Street shall be cleared at least quarterly, but may require clearing more often if Omnitrans is notified by the City or County of San Bernardino with a “Notice and Order to Abate.”
- 2) **Verification of Dimensions.** Contractor conducted a careful examination of the premises and thoroughly familiarized themselves with the requirements of the contract and scope of the work to be done.

- 3) Contractor deems to have made such a study and examination, and that it is familiar with and accepts all conditions of the respective sites.

### **3. STATEMENT OF WORK**

Contractor's work shall include the following tasks and shall be completed on or before the timeframes agreed upon between Project Manager and Contractor.

#### **A. GENERAL**

1. A thorough inspection shall be made of all turf, planters, landscape and surrounding areas at least once per week to keep them free from weeds, paper, trash and/or other debris. All turf, trees, shrubs and planting shall be inspected weekly for evidence of disease and infestation of rodents, insects or other pests. Contractor shall provide immediate treatment to prevent further damage. To maintain a neat and orderly appearance, each service call by the contractor, shall include sweeping, vacuuming or hosing of all entryways and walkways as necessary.
2. Contract must furnish all labor, equipment, materials, tools, services and special skills required to perform the landscape maintenance as set forth in these specifications. Maintenance of plant material shall include, but not be limited to mowing, trimming, pruning, watering, fertilization, weed control, cultivation, pest control and cleanup. Irrigation maintenance shall include operation of systems, adjustments and minor repairs. The walkways shall be cleaned to prevent impairment of walking surface from plant materials.

#### **B. LICENSE**

A class C-27 State Contractors license is required.

#### **C. COORDINATION**

Prior to commencing work, the Contractor shall check-in with the Facility Maintenance Supervisor, or his designee, responsible for the Operations site where work is to be performed. All work shall be accomplished in such a manner as to minimize interference with Omnitrans' operations.

#### **D. FINAL INSPECTION**

All work performed by the Contractor shall be inspected by the site Facilities Maintenance Supervisor, or his designee, prior to departing the premises. A "Verification of Work Performed" document will be completed and forwarded to the Facility Manager, prior to approval of invoice for payment.

#### 4. PLANT MATERIAL

##### A. Turf

##### 1) Mowing

- a) Turf shall be mowed and clippings removed on a weekly basis.
- b) Cut cool season turf at least two and one-half inches (2-1/2") during warm season and reduce to two inches (2") during cool seasons.
- c) Cut warm season turf at one and one-half inches (1-1/2").
- d) Turf shall be cut at a uniform height.
- e) Turf shall be cut with sharp blades.
- f) Mowing patterns shall be changed weekly to avoid rutting of turf areas.
- g) Care shall be exercised during the mowing operation to prevent damage to trees and other obstacles in the lawn areas such as electrical boxes, fixtures, buildings and signage.
- h) No mowing shall be performed in wet conditions.

##### 2) Edging

- a) All turf edges adjacent to walks, curbs, paved areas, fixtures at grade and shrub or ground cover areas, shall be trimmed with a power edger as needed to maintain a crisp and neat appearance.
- b) A six inch (6") bare drift buffer zone shall be maintained around the circumference of all trees, buildings and raised fixtures in the turf.
- c) Care shall be exercised with regard to the use of string trimmers to prevent damage to building surfaces, walls, headerboard, light fixtures, signage, etc.
- d) String trimmers shall not be used to edge around trees.

##### 3) Fertilization

Fertilize turf as required to maintain a lush, green appearance and perpetual growth. A minimum of four (4) times per year using seven pounds of 16-6-8 per 1,000 square feet will be required. **All material and labor required for fertilizing services shall be included in the monthly fees.**

- 4) Watering
  - a) Operate irrigation system to obtain uniform moisture throughout root zone.
  - b) Use a soil probe or moisture sensor to determine moisture needs.
  - c) Use repeat cycles to maximize penetration and minimize runoff.
  - d) To minimize soil compaction, allow soil in turf areas sufficient time to dry prior to mowing

5) Weed, Pest and Disease Control

Contractor shall maintain weed, pest and disease free turf areas at all times by either chemical or mechanical means.

**B. Ground Cover**

1) Edging and Trimming

- a) Adjacent walls, curbs, paved areas, building, shrubs, trees and other miscellaneous objects in ground cover areas shall be edged as needed to maintain a neat, clean and well defined edge.
- b) A four to six inch (4"-6") bare dirt clearance shall be maintained around the circumference of all trees, shrubs, signs, etc., in ground cover and adjacent building structures.

2) Ground Cover Fertilization

Fertilize a minimum of four (4) times per year using ten (10) pounds of 16-6-8 per 1,000 square feet, or an approved equal program, to maintain an appearance of continual growth. All materials and labor required shall be included in the monthly fees.

3) Watering

Contractor shall schedule water application to produce a deep rooted ground cover, i.e.,: short periods with repeat cycles.

4) Weed, Pest and Disease Control

- a) Contractor shall maintain a weed, pest and disease free ground cover.
- b) Cultivate bare areas a minimum of once per week. Care shall be exercised in cultivation so as not to damage susceptible plant root.

**C. Shrubs**

1) Pruning

- a) Pruning of shrubs shall be performed to attain maximum desired effect while retaining as much of the natural characteristics or branching as possible.

- b) Shrubs shall be pruned as required for safety, removal of broken or diseased branches, general containment or appearance.
- c) Natural shape - The intent is to emphasize the natural form of the shrub. Initially “pinch prune” to keep compact and develop structure. Ultimately, annually remove 50% of old stems to the ground to rejuvenate. Avoid shearing which will eliminate flowering wood and destroy character.
- d) Natural Hedge - The intent is to develop a loose, informal appearing hedge which requires only minimal attention to keep in shape and size. Initially “pinch prune” to keep compact. Allow top to fill in solid horizontally. This is critical to avoid “legginess.”
- e) Formal Hedge - It is the intent of these shrubs to have straight, crisp edges. Initial “pinch pruning” with shears will encourage the shrub to fill in.
- f) Pruning at the correct time of year is essential to maximize flowering potential.
- g) After flowering, remove any spent blossoms on flower stalks.
- h) Shrubs around the East Valley Administration building shall be kept pruned to no higher than the building windowsills and not touching the building walls.
- i) All hedges in the parking lot center median(s) shall be kept pruned to no higher than 3 feet from the finished surface.
- j) All other hedges and shrubs shall be kept pruned to no higher than 3 feet above the ground.
- k) Hedges within 15 feet of all entry/exit vehicular and pedestrian points shall be kept pruned to no higher than 2 feet.
- l) Trees shall be pruned to avoid conflict with vehicular or pedestrian traffic and shall not be allowed to interfere with site lighting or security cameras.
- m) Trees, shrubs, and ground cover must be kept off fire hydrants, signs, fences, sitting areas, walkways and driveways.

- n) Foliage growing on block walls, chain link fences, etc., shall be kept trimmed to eliminate hiding areas near block walls, chain link fences, etc., and keep barbed wire/razor wire exposed.”

2) Fertilization of Shrubs

- a) Fertilize all shrubs a minimum of four (4) times per year with one-fourth (1/4) pound of 16-6-8 applied to shrub base and watered in or an approved equal program. All material and labor required shall be included in the monthly fees.
- b) Due to area soil conditions, supplemental feedings of iron may be required to prevent chlorosis.
- c) Contractor shall be responsible for applying all material required to correct mineral deficiencies affecting plant growth.

3) Weed, Pest and Disease Control

- a) Contractor shall maintain weed, pest and disease free shrub beds at all times.
- b) All shrub areas that are not planted with ground cover will be raked and cultivated regularly.

**D. Vines**

1) Pruning

- a) Vines and espalier shall be checked and retied as required.
- b) Vines shall be pruned and maintained so as not to obstruct fixtures, signs, windows, etc.

2) Fertilization

- a) Fertilize all vines with one-fourth (1/4) pound of 10-10-5 a minimum of two (2) times per year. All material and labor required shall be included in the monthly fees.

3) Watering

- a) Watering as necessary to provide optimum growth.

**E. Trees**

- 1) Trees shall be pruned as required to remove broken, diseased branches or for general containment. It shall be Contractor's prime responsibility, related to pruning, to conduct a pruning program, which must be approved by Omnitrans' Facility Manager. This program should develop proper tree scaffolding, strength and appearance consistent with intended use.

- 2) Tree stakes, ties and guys shall be checked and straightened as needed. Ties will be adjusted to prevent girding. Remove unneeded stakes, ties and guys as directed.
- 3) Apply all chemical controls such as insecticides as required to control or prevent pests.
- 4) Fertilize all trees as needed. May require deep root feeding or foliage application.
- 5) Surface roots which become maintenance or appearance problems will be removed as required to prevent damage to adjacent paved areas.
- 6) No climbing or the use of gaffs will be allowed. Pruning shall be accomplished with pole saws or by the use of mechanical lifts.
- 7) See attached Tree Trimming Specifications

**5. IRRIGATION SYSTEMS - CONTROLLERS**

- A. Contractor is to adjust the watering schedule equal to the percolation rate each area is capable of receiving based on topography, soil type, plant material, season or climatic factors.
- B. Contractor shall utilize repeat cycle on controller to eliminate excessive run-off.
- C. Hours of scheduled operation will be programmed to minimize disease occurrence of plant material.
- D. Schedule operation to reduce possible nuisance from sprinkler operation to pedestrians or vehicles.
- E. Operation of System - All systems shall be personally observed during operation cycle at least once a week to verify effectiveness of sprinkler operations.
  - 1) Contractor will adjust and clean as necessary all sprinkler heads, valves and pressure reducers to continue operation at maximum efficiency and performance.
  - 2) Sprinkler heads in turf areas shall be kept clear of over-growth which may obstruct maximum operation. No chemical spraying or weed eating around head will be allowed.
- F. All labor and material for the repair or replacement of worn or damaged sprinkler heads, or damaged risers shall be included in the monthly fee.
- G. Main lines, valves, controllers and timers shall be replaced or repaired and parts and labor will be an extra charge in accordance with the provisions under "Extra Work".

**6. CLEAN-UP**

- A. Contractor shall remove and dispose of all debris resulting from the contractors operations. All grass clippings deposited on roadways or walks shall be picked up after each mowing or trimming operation.

- B. All debris resulting from any of Contractor's operations shall be removed and disposed of in a legal disposal site at the contractor's expense. No debris will be allowed to remain at Omnitrans' facilities at the end of the work day. No Omnitrans containers, dumpsters or refuse receptacles will be used to dispose of landscaping debris.
- C. All walkways shall be cleaned of debris and trash shall be removed from hardscape and landscape area when on site.
- D. All landscape areas shall be patrolled whenever on site to check for vandalism, broken tree branches, rodents, snails, insects, pests, disease, etc. Any problem shall be reported to the Omnitrans', Facility Manager.

**7. WEED CONTROL OF PAVED SURFACES**

- A. Contractor will be responsible for removing weeds in all hardscape areas.

**8. WEEDS, VEGETATIVE GROWTH AND DEBRIS CLEARING OF "J" STREET LOT**

- A. Contractor is to furnish all supervision. Labor, materials, equipment and tools such as, but not limited to tractors, disc, trucks, mowers, shovels, hoes, rakes, trash cans, containers and/or tarps, gas powered weed eaters, chain saws and other tools and equipment as required for the removal of weeds, debris and vegetative growth from the empty lot.
  - 1. All internal combustion equipment must be equipped with an approved spark arrester and sufficient noise control devices when not equipped with turbo charger; included but not limited to tractors, weed eaters, and chain saws.

**9. EXTRA WORK**

- A. In the event that Contractor is requested and agrees to perform work which is not specified under this contract , the following procedure will govern such extra work:
- B. Extra work will be on a proposal type basis that has been previously approved by the Facilities Maintenance Manager.
- C. By written notice or order, Omnitrans may, from time to time, make changes in the "Scope of Work". If any such change causes an increase or decrease in price of this agreement or in the time required for its performance, Contractor shall promptly notify Omnitrans hereof and assert its claim for adjustment within thirty (30) days after the change is ordered, and an equitable adjustment shall be negotiated.
- D. Extra work will be cost itemized on a separate monthly billing.
- E. Extra work may include, but not be limited to, the following:
  - 1) Replacement of plant material due to failure beyond Contractor's control.



- 2) Any additional treatment required for planting, i. e: soil amendments, irrigation, etc., not specified in the contract.
- 3) Laboratory for soil or plant testing (if required).
- 4) Controlling all rodents in landscaped areas.
- 5) Overseeding of warm season grasses.
- 6) Irrigation System Repair (excluding sprinkler heads and risers).

## **10. PESTICIDES**

### **A. General**

All material shall be in strict accordance with the Food and Agriculture Code.

### **B. Application of Pesticides**

- 1) Pesticides shall be applied at times which limit the possibility of contamination from climatic and other factors. Applicator shall monitor forecasted weather conditions to avoid making applications prior to inclement weather to eliminate potential runoff of treated areas. When water is required to increase pesticide efficiency, it shall be applied only in quantities that each area is capable of receiving without excessive runoff.
- 2) Care shall be taken in transferring and mixing pesticides to prevent contaminating areas outside the target area. Application methods shall be used which insure materials are confined to target areas. Disposal of pesticides shall be within the guideline established in the California Food and Agricultural Code.
- 3) All labor for the application of herbicides for grass control on slopes shall be included in the monthly fees. The material cost will be considered as an extra on this contract.

### **C. Hazardous Materials**

- 1) Contractor will perform all work in a clean, safe and professional manner, causing no hazards to Omnitrans' staff, facility, the environment or contractors service personnel.
- 2) All hazardous waste must be handled, collected, stored and disposed of in accordance with federal, state and local environmental compliance regulations.
- 3) Coordination of hazardous waste collection, storage and disposal shall be made through Omnitrans' Facilities Supervisor, or his or her designee.
- 4) All chemicals used must have MSDS (material safety data sheets) provided to the Facilities Supervisor, at Omnitrans, for prior approval.

## **11. TREE TRIMMING SPECIFICATIONS**

The Contractor shall provide tree trimming services to include all labor, equipment, tools and materials required to perform the work in accordance with the specifications herein.

## **12. GENERAL**

- A. All work shall be performed in accordance with all applicable Federal, State and County rules and regulations. The Contractor shall obtain all necessary permits (If applicable) to perform the work.
- B. No vehicles will be allowed on non-lawn planting areas. Only vehicles to access the trees for trimming purposes and dump trucks and chipper's shall be allowed to drive on lawn areas and walkways. The Contractor shall inspect the areas prior to driving on the lawns to determine line locations of sprinkler systems and any other above and/or below grade utilities. The Contractor shall exercise care to avoid these utilities. The Contractor shall not drive on wet or muddy lawns where it is likely to cause ruts in the lawns.
- C. Vehicles shall not be driven over above grade tree roots and no closer than 10 feet from the base of the tree trunk. No other equipment or vehicles of any type, including pickup trucks shall be allowed on lawns and walkways.
- D. The Contractor shall provide safety signs and other barricades and devices necessary for the safety and convenience of the general public. The Contractor shall at all times conduct his work to assure the least possible obstruction of public traffic without obstructing the free flow of traffic and public lights
- E. Any damage to buildings, structures, vehicles, plants and other items in the area and adjoining properties shall be repaired and/or replaced by the Contractor at his own expense and to the satisfaction of Omnitrans and the injured party(s).
- F. The Facility Manager or designated point will routinely inspect the Contractor's work during any phase of the operations. These inspections shall be made to assess progress of work and determine acceptability of the Contractor's work.
- G. Adverse conditions which may require major field changes not stated in this scope of work must be reported to the Facility Manager prior to commencement or continuation of work.

## **13. WORK SCHEDULE**

- A. The Contractor shall notify Omnitrans 48 hours prior to starting work.
- B. Work shall be performed during daylight hours on any day of the week.

## **14. TREE TRIMMING TERMINOLOGY**

- A. Branch Collar: The bark tissue formed between the branch and the main trunk or between any branches or limbs,

- B. Compartmentalization: Process where tree bark closes over cut ends to create wound closure.
- C. Crown: The part of the tree, made of branches and leaves, from the lowest branches to the top of the tree.
- D. Crown cleaning: Removing dying, decayed, diseased, weak, poorly attached, and dead branches from the crown.
- E. Crown containment: Removing branches growing outside from and not part of the exterior surface of the crown,
- F. Crown raising: Removing the lowest branches of the crown. Also called raising the ceiling of the tree.
- G. Crown thinning: Removing branches to increase light penetration, air movement, and reduce weight of the crown.
- H. Dead and diseased wood: Dead or dying branches or woody tissue. Branches are dying where recovery will not occur and / or branches will never thrive.
- I. Lion's tail: Conditions where limb or branch is bare of foliage except at the tips. The limb resembles the tail of a lion. Condition results from trimming operations, or tree's response to stub cuffing limb.
- J. Stump grind: Mechanical grinding of the stump and any above and below grade roots to render the tree unable to grow.
- K. Stub cutting: Trimming operation where branches are cut too far from the branch collar to allow for compartmentalization of the cut end. Stub cut branches typically have no foliage.
- L. Suckers: Vigorous, usually vertical, shoots growing from tree root area.
- M. Topping or heading: Trimming operation where crown height or spread is reduced by removing trunk, limbs, or branches without regard for compartmentalization of the cut end. This would be similar to stub cutting.
- N. Water sprouts: Vigorous, usually vertical, shoots growing from above grade portions of the tree.

## **15. GENERAL TREE TRIMMING REQUIREMENTS**

The Contractor shall trim all trees following these General Tree Trimming Requirements:

- A. The Contractor shall use best horticultural practices to perform all tree trimming operations. Contractor shall be aware of and shall comply with City ordinances governing tree trimming work and traffic control regulations during work. All trimming shall be performed in accordance with ANSI Z133, OSHA, the International Society of Arboriculture, and National Arborist Association's Pruning Standards.
- B. The Contractor shall determine if trees to be trimmed exhibit conditions hazardous to vehicles, buildings, walls, paving, irrigation systems, planting, and

other site amenities and the general public; and detrimental to the well being of the tree. If such conditions exist, the Contractor shall immediately notify the Facility Manager.

- C. The use of climbing spurs and spikes shall not be allowed for climbing palms and trees.
- D. All pruning cuts shall be performed with pruning shears, lopping shears, hand, pole and chain saws only. Cane knives and machetes are not allowed.
- E. Proper pruning cuts shall be performed to prevent bark tears and to promote compartmentalization of cut ends.
- F. Stub cutting is not allowed. Cuts shall be made close to the branch collar.
- G. Lions tailing is not allowed. After trimming adequate foliage shall remain to provide proper growth and vigor of the tree limbs.
- H. Topping or heading is not allowed.
- I. Ropes and cables shall be employed to lower limbs and branches which have the potential to cause damage below if dropped without restraint.
- J. The Contractor shall completely remove all trimmings and any other debris resulting from the work on a daily basis. All refuse shall be disposed of off-site at locations meeting all Federal, State and County ordinances and regulations. As possible, the Contractor shall dispose of refuse at recycling facilities.

#### **16. TREE TRIMMING WORK REQUIREMENTS**

- A. All dead, dying wood and stub cuts shall be removed from the tree. -
- B. Water sprouts in the crown shall be selectively removed to minimize flush of water sprouts after trimming.
- C. Clearing trees from trees or other objects shall be horizontal clearance.
- D. Clearing trees above trees or other objects shall be vertical clearance.
- E. Clearing all around trees or other objects shall be horizontal and vertical clearance.
- F. Clearing from wires shall be performed by Tree Trimmer qualified and certified to do the work.
- G. Raising the ceiling height, crown raising, shall be done to height above finish grade, unless indicated otherwise
- H. Trees to be removed shall be stump ground. After grinding, hole shall be backfilled with grindings and soil, so at final settlement top is level with surrounding finish grade.

**17. SPECIFICATIONS FOR SAFETY**

- A. This section covers general safety during the entire project.
- B. Contractor must perform the following tasks as required to their full intent.
- C. If there are inconsistencies between this document and the Scope of Work the Scope of Work shall govern.

**18. LIABILITY**

- A. Contractor testifies that Contractor, its subcontractors, and any other persons who will or might visit or work at the Project Site are fully self-informed as to the required safety practices and will enforce same and assume all liability associated therewith.
- B. Retain liability for damages to the any property because of Contractor's actions or negligence.
- C. Retain the care, custody, control, and protection of its equipment and materials and all Omnitrans furnished components on the job site, until acceptance of the completed work by Omnitrans.
- D. Replace, at no expense to Omnitrans, any damaged or stolen material or components, or material deemed unsatisfactory for use in the work, as determined by the designated Omnitrans representative.
- E. Save Omnitrans, its officers and agents free and harmless from liability of any nature or kind arising from any use, trespass or damage occasioned by his operations on premises of third persons.

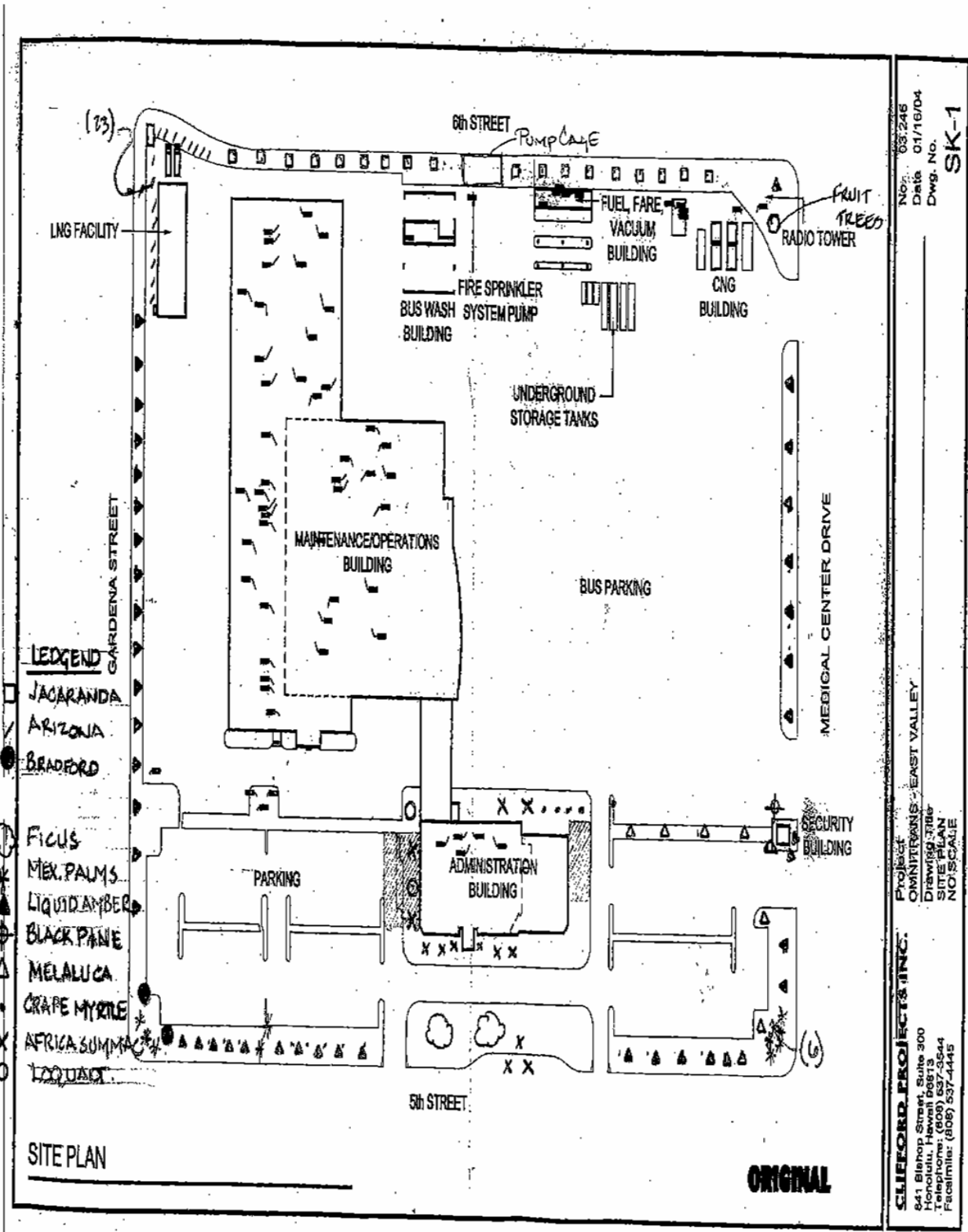
**19. REGULATORY REQUIREMENTS**

- A. Comply with all governing regulations and regulatory agencies including, but not limited to all applicable Federal, State, County, and Local requirements, pollution and environmental protection requirements, utility company requirements and recommendations, and underwriters recommendations that pertain to the Project.
- B. Comply with the requirements of the authority that has jurisdiction; the strictest requirement will govern.
- C. Provide everything necessary for conformance with those requirements.

**20. GENERAL SAFETY REQUIREMENTS**

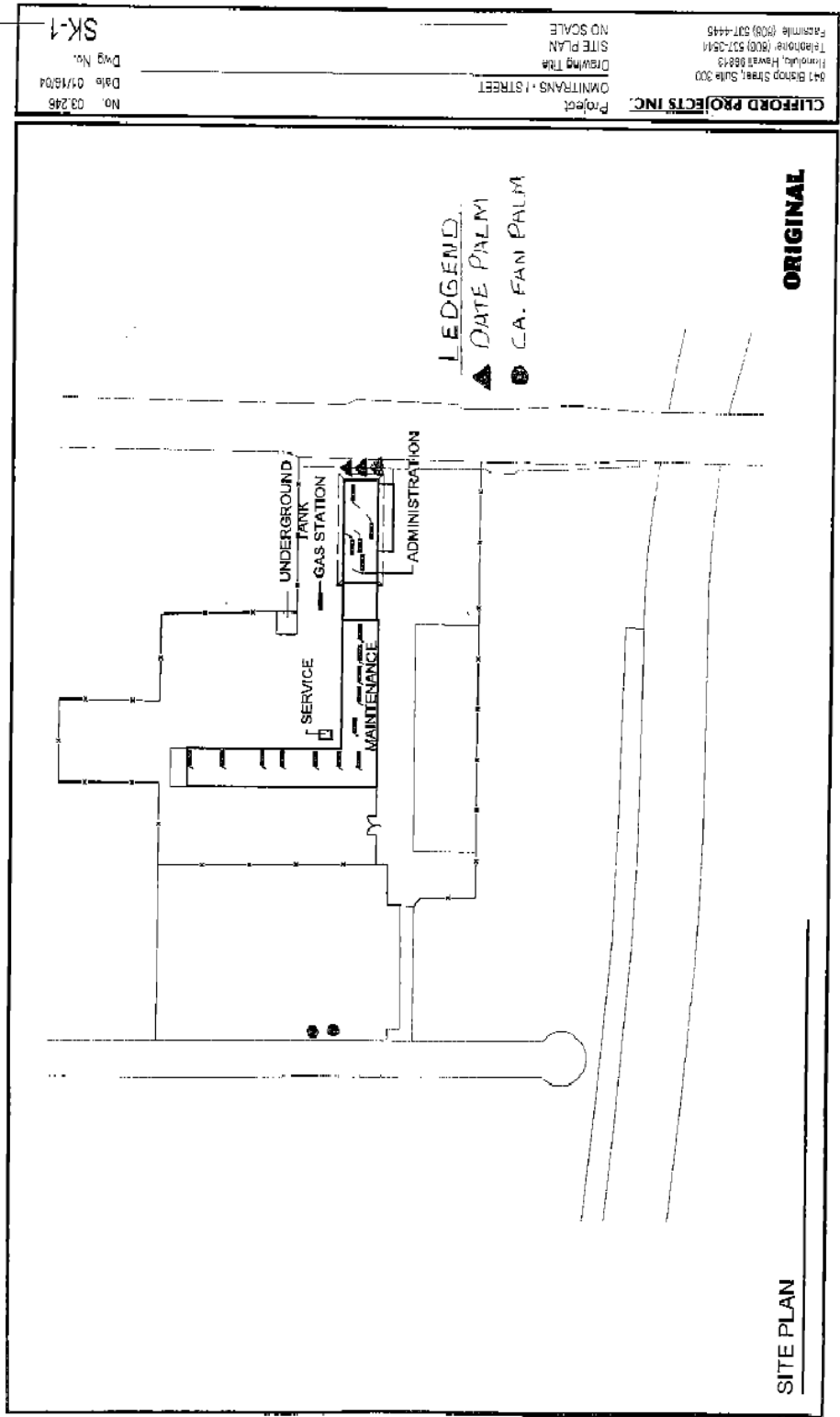
- A. Protect the premises, workers, the public, Omnitrans' employees, Omnitrans' equipment, and Contractor's employees from work hazards.
- B. Adhere to fitness for duty requirements, appropriate working attire, and working area cleanliness.
- C. Enforce safety and security of the work site.
- D. Protect all open excavation areas with caution tape, security fence, and/or barricades.

- E. Plan and perform all work in a manner that will provide hazard-free work areas for Omnitrans personnel.
- F. Provide and post signs, place barricades and similar safe guards to direct traffic away from the site of work.
- G. Remove barricades when area is capable of receiving traffic.
- H. Ensure that anything electrical is properly grounded and that all precautions are taken to prevent any chance of electrical shock or spark.
- I. Provide fire protection for contractor's material, facilities, and equipment. No fire protection equipment or personnel shall be provided by Omnitrans.
- J. Adhere to all safety requirements as required by regulatory agencies and industry safety standards, whichever is the stricter.
- K. Contractor's personnel shall display contractor identification at all times while on Omnitrans property. Contractor's personnel shall show identification when asked by Omnitrans employees or security personnel."

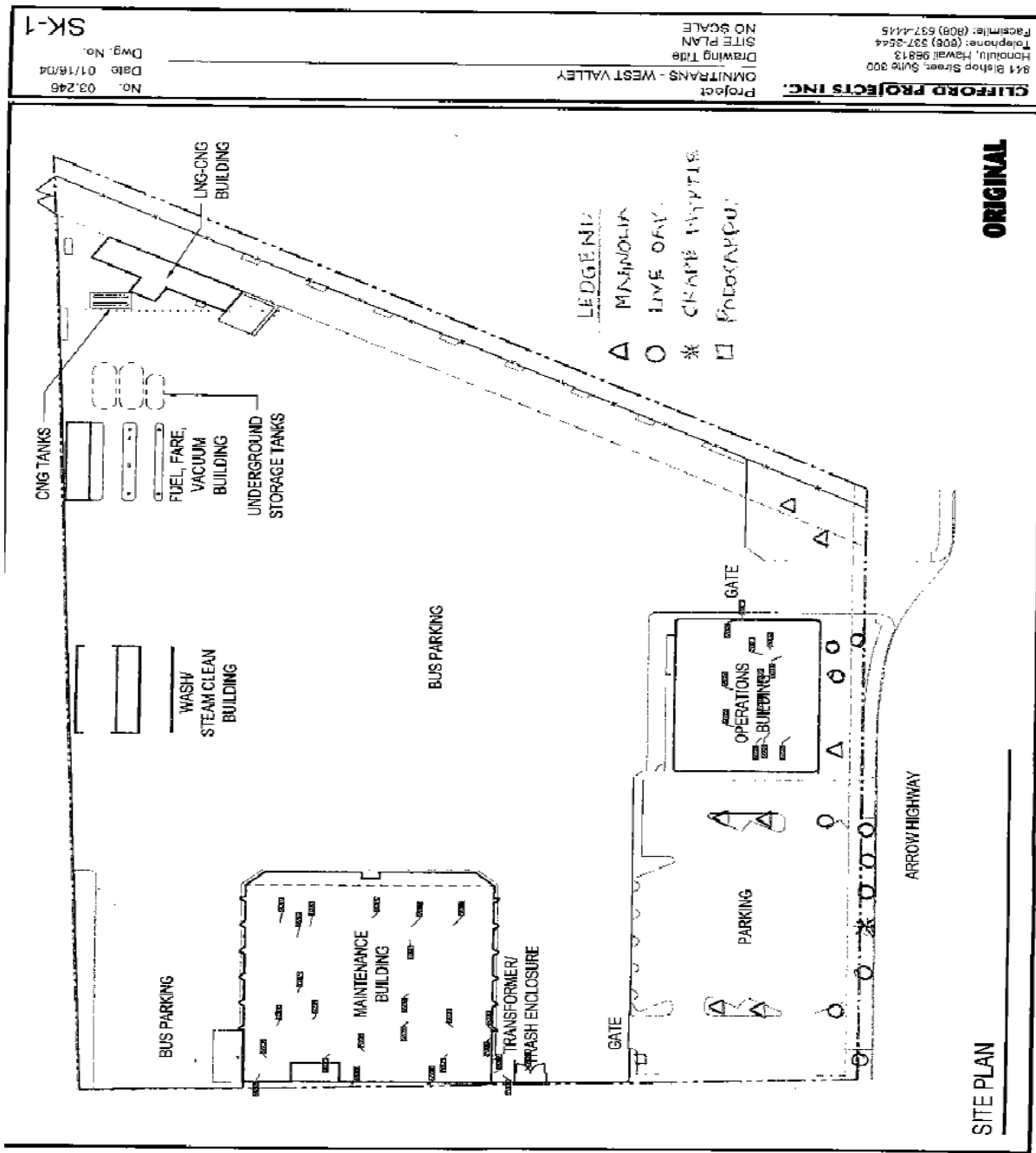


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MNT14-13 LANDSCAPING SERVICES

Attachment C - Schedule of Fees

Item Num	Section	Item Code	Description	Unit of Measure	Qty	Monthly Unit Price	Annual Price
1	Base Year 1 - January 13, 2014 - January 12, 2015		East Valley Facility	Monthly	12	\$1,295.00	\$15,540.00
2	Base Year 1 - January 13, 2014 - January 12, 2015		West Valley Facility	Monthly	12	\$395.00	\$4,740.00
3	Base Year 1 - January 13, 2014 - January 12, 2015		I Street Facility	Monthly	12	\$80.00	\$960.00
4	Base Year 1 - January 13, 2014 - January 12, 2015		J Street Lot	Monthly	12	\$60.00	\$720.00
5	Base Year 1 - January 13, 2014 - January 12, 2015		Tree Trimming	Monthly	12	\$850.00	\$10,200.00
						Subtotal	\$32,160.00
6	Base Year 2 - January 13, 2015 - January 12, 2016		East Valley Facility	Monthly	12	\$1,295.00	\$15,540.00
7	Base Year 2 - January 13, 2015 - January 12, 2016		West Valley Facility	Monthly	12	\$395.00	\$4,740.00
8	Base Year 2 - January 13, 2015 - January 12, 2016		I Street Facility	Monthly	12	\$80.00	\$960.00
9	Base Year 2 - January 13, 2015 - January 12, 2016		J Street Lot	Monthly	12	\$60.00	\$720.00
10	Base Year 2 - January 13, 2015 - January 12, 2016		Tree Trimming	Monthly	12	\$850.00	\$10,200.00
11	Base Year 2 - January 13, 2015 - January 12, 2016		sbX Corridor	Monthly	12	\$2,395.00	\$28,740.00
						Subtotal	\$60,900.00
12	Base Year 3 - January 13, 2016 - January 12, 2017		East Valley Facility	Monthly	12	\$1,335.00	\$16,020.00
13	Base Year 3 - January 13, 2016 - January 12, 2017		West Valley Facility	Monthly	12	\$415.00	\$4,980.00
14	Base Year 3 - January 13, 2016 - January 12, 2017		I Street Facility	Monthly	12	\$90.00	\$1,080.00
15	Base Year 3 - January 13, 2016 - January 12, 2017		J Street Lot	Monthly	12	\$70.00	\$840.00
16	Base Year 3 - January 13, 2016 - January 12, 2017		Tree Trimming	Monthly	12	\$900.00	\$10,800.00
17	Base Year 3 - January 13, 2016 - January 12, 2017		sbX Corridor	Monthly	12	\$2,614.00	\$31,368.00
						Subtotal	\$65,088.00

18	Option Year 1 - January 13, 2017 - January 12, 2018	East Valley Facility	Monthly	12	\$1,335.00	\$16,020.00
19	Option Year 1 - January 13, 2017 - January 12, 2018	West Valley Facility	Monthly	12	\$415.00	\$4,980.00
20	Option Year 1 - January 13, 2017 - January 12, 2018	I Street Facility	Monthly	12	\$90.00	\$1,080.00
21	Option Year 1 - January 13, 2017 - January 12, 2018	J Street Lot	Monthly	12	\$70.00	\$840.00
22	Option Year 1 - January 13, 2017 - January 12, 2018	Tree Trimming	Monthly	12	\$900.00	\$10,800.00
23	Option Year 1 - January 13, 2017 - January 12, 2018	sbX Corridor	Monthly	12	\$2,614.00	\$31,368.00
					Subtotal	\$65,088.00
24	Option Year 2 - January 13, 2018 - January 12, 2019	East Valley Facility	Monthly	12	\$1,335.00	\$16,020.00
25	Option Year 2 - January 13, 2018 - January 12, 2019	West Valley Facility	Monthly	12	\$415.00	\$4,980.00
26	Option Year 2 - January 13, 2018 - January 12, 2019	I Street Facility	Monthly	12	\$90.00	\$1,080.00
27	Option Year 2 - January 13, 2018 - January 12, 2019	J Street Lot	Monthly	12	\$70.00	\$840.00
28	Option Year 2 - January 13, 2018 - January 12, 2019	Tree Trimming	Monthly	12	\$900.00	\$10,800.00
29	Option Year 2 - January 13, 2018 - January 12, 2019	sbX Corridor	Monthly	12	\$2,614.00	\$31,368.00
					Subtotal	\$65,088.00
30	Hourly Rates for Extra Services	Supervisor (Fully Burdened) HR		1	\$26.00	\$26.00
31	Hourly Rates for Extra Services	Foreman (Fully Burdened) HR		1	\$22.00	\$22.00
32	Hourly Rates for Extra Services	Lead-Man (Fully Burdened) HR		1	\$20.00	\$20.00
33	Hourly Rates for Extra Services	Labor (Fully Burdened) HR		1	\$18.00	\$18.00
					Subtotal	\$86.00



**CONTRACT MNT14-13  
LANDSCAPING SERVICES**

**LANDSCAPE DRAWINGS  
AVAILABLE UPON REQUEST**

ITEM # F8

**DATE:** January 8, 2014

**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: AUTHORIZE AWARD – SOLE SOURCE CONTRACT MNT14-123  
GENFARE EQUIPMENT PARTS AND REPAIR**

### **FORM MOTION**

Authorize the Interim CEO/General Manager to award a sole source contract to SPX Corporation, dba Genfare, of Elk Grove Village, IL, for the provision of Genfare Equipment Parts and Repair for three base years beginning January 20, 2014 and ending December 31, 2016, in an amount not to exceed \$321,546, and the authority to exercise Option Year One in the amount of \$113,676 and Option Year Two in the amount of \$117,087, extending the contract to no later than December 31, 2018, for a five-year contract amount not to exceed \$552,309, plus a ten percent contingency of \$55,231, for a project amount not to exceed \$607,540.

### **BACKGROUND**

Omnitrans' fleet of 40' buses is equipped with the CENTSaBILL and GFI Odyssey Collection/Validating Fareboxes. The fourteen 60' sbX articulated buses each have a GFI Odyssey Collection/Validating Farebox located at the front entrance door and two CardQuest Fare Validation Boxes at the rear entrance doors. The twenty-three stations along the sbX Green Line Corridor are equipped with the VendStar Ticket Vending Machines.

Omnitrans' Maintenance department maintains this equipment and requires replacement parts, trim units, manuals, decals, software updates, and repairs, to keep the equipment functioning properly.

In accordance with FTA Circular 4220.1F, Section VI-17, procurement by noncompetitive proposals may be used when the manufacturer is the sole provider of the items compatible with existing equipment/systems and when the equipment/systems are not interchangeable with similar parts and equipment from other manufacturers. Genfare is the Original Equipment Manufacturer (OEM) and sole manufacturer and seller of these parts/services.

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

### **FUNDING SOURCE**

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

Department	1200
Expenditure Code	504010

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

### **CONCLUSION**

Award of this contract will allow staff to keep the Genfare equipment functioning for the purpose of fare collection and fare validation.

PSG:JMS:CV



## CONTRACT AGREEMENT

between

Genfare, a Division of SPX Corporation  
751 Pratt Boulevard  
Elk Grove Village, IL 60007

(hereinafter "CONTRACTOR")  
Telephone: 847-871-1178  
Fax: 847-593-8909

And

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

### CONTRACT DOCUMENTS

**CONTRACT MNT14-123**

**Genfare Parts and Repair**

Contract Amount: Not to Exceed  
\$321,546

#### Omnitrans Project Manager:

Name: Frank Flores  
Title: Interim Materials Supervisor  
Telephone: (909) 379-7204  
Email: [frank.flores@omnitrans.org](mailto:frank.flores@omnitrans.org)

#### Contract Administrator:

Name: Christine Van Matre  
Title: Contract Administrator  
Telephone: (909) 379-7122  
Fax: (909) 379-7322  
Email: [christine.vanmatre@omnitrans.org](mailto:christine.vanmatre@omnitrans.org)



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ATTACHMENT A – PARTS LIST

ATTACHMENT B – REGULATORY REQUIREMENTS

This Agreement is made and entered into as of this \_\_\_\_ day of January, 2014 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and GFI Genfare, Inc. (hereinafter referred to as "CONTRACTOR").

## **RECITALS**

WHEREAS, OMNITRANS is a joint powers authority organized under Sections 6500 et seq. of the California Government Code and Section 130255 of the California Public Utilities Code with power to contract for parts and services described in Attachment A to this Agreement entitled "Attachment A, Parts List" (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 provide parts and related tasks as described in Attachment A, Parts List hereto and is incorporated by reference into and made a part of this Agreement.
- B. Attachment A is a partial parts list; Omnitrans will have access to all Genfare parts necessary to keep Omnitrans' Genfare equipment functioning.
- C. Contract also includes manuals, decals, software updates and repairs for Genfare equipment.
- D. This is a non-exclusive Agreement, whereby OMNITRANS may, at its sole discretion, augment or supplant the Work with its own forces or forces of another contractor or entity. CONTRACTOR will cooperate fully with OMNITRANS' staff or other contractor or entity that may be providing similar or the same Work for OMNITRANS.

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

The term of this Agreement shall be from the date of execution of this Agreement and continue in effect through December 31, 2016, 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 January 1, 2017 through December 31, 2019, which period encompasses the Initial Term and Two Option Years.

### **3. COMPENSATION**

- A. For CONTRACTOR's full and complete performance of its obligations under this Agreement, OMNITRANS shall pay CONTRACTOR on a FIXED PRICE basis for parts at the unit prices shown in Attachment A and TIME and MATERIALS for repairs, subject to the maximum cumulative payment obligation.
- B. Pricing stated in Attachment A is valid through calendar year 2014. Contractor shall provide an updated pricing list prior to the beginning of the each calendar year.
- C. OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Three Hundred Twenty-One Thousand, Five Hundred and Forty-Six Dollars (\$321,546), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

### **4. INVOICING AND PAYMENT**

- A. CONTRACTOR shall invoice OMNITRANS on a monthly basis no later than the 15<sup>th</sup> of each month. CONTRACTOR shall furnish information as may be requested by OMNITRANS to substantiate the validity of an invoice.
- B. CONTRACTOR shall submit invoices in duplicate to:  
  
OMNITRANS  
1700 West Fifth Street  
San Bernardino, CA 92411  
Attn: Accounts Payable
- C. 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

- D. OMNITRANS shall remit payment within thirty (30) calendar days of approval of the invoices by OMNITRANS' Project Manager.
- E. 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. PACKING SLIPS**

Packing slips must accompany each shipment unit (included with each package in shipment), showing Omnitrans' P.O. number, description, and part number for each item.

## **6. ACCEPTANCE**

Goods are subject to Omnitrans' inspection and approval within a reasonable time after delivery. If specifications are not met or not approved, material may be returned at supplier's expense.

## **7. DELIVERY**

Unless otherwise indicated on the face of this order, delivery shall be FOB destination. COD shipments will not be accepted. Deliveries for all departments must be made through Omnitrans' Receiving Department. Nonpayment may result for goods delivered in any other manner.

## **8. PARTIAL DELIVERIES**

Shipments must be identified as partial or complete, along with the number of shipping units.

## **9. MODIFICATIONS**

Supplier shall not make any alterations or change to this order in any fashion without prior written authorization from Omnitrans.

## **10. WARRANTY**

Vendor warrants that the item(s) provided and/or work performed under this contract comply with all specifications, are free of liens and encumbrances, and that workmanship and materials are free from defects. Work shall comply with nationally recognized codes and established industry standards. Equipment shall carry the manufacturers' most favorable commercial warranties. The warranty period shall begin after acceptance of item(s) and/or work. Contractor agrees to remedy by replacing or repairing any item(s) that is damaged or defective during normal usage within the warranty period, at no additional cost to Omnitrans. Such repair or replacement shall occur within a reasonable time frame and to the

satisfaction of Omnitrans.

## **11. 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.

## **12. NOTIFICATION**

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

To OMNITRANS:

Omnitrans  
1700 West Fifth Street  
San Bernardino, CA 92411  
Attn: Christine Van Matre  
Phone: 909-379-7122  
Email: [christine.vanmatre@omnitrans.org](mailto:christine.vanmatre@omnitrans.org)

To CONTRACTOR:

Genfare  
751 Pratt Boulevard  
Elk Grove, IL 60007  
Attn: Terese Gillum  
Phone: 847-871-1178  
Email: [genfare.sales@spx.com](mailto:genfare.sales@spx.com)

## **13. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES**

### **A. OMNITRANS' Project Manager**

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

Project Manager: Frank Flores:

- 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>
Brittany Enright	Customer Service Representative
Mark Mahon	Director of Sales, Western Region

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.

#### **14. 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.

## **15. 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.

## **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 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.

## 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, 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.*

Additional Insured:

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

## 21. 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.

## **22. 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.

## **23. 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.

## **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. Such deliverables shall be deemed works made for hire, and all rights in copyright therein shall be retained by OMNITRANS.

## **25. 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.

## **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. 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.

### **34. 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.

### **35. 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.

### **36. 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.

### **37. 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.

### **38. 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.

### **39. 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.

### **40. 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.

### **41. 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.

42. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, (2) Attachment A, Parts List, and (3) Attachment B, Regulatory Requirements.

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

GFI GENFARE, INC.

\_\_\_\_\_  
P. SCOTT GRAHAM  
Interim CEO/General Manager

\_\_\_\_\_  
Kim R. Green, President

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE

Federal Tax I.D. No. 38-1016240

DP\_\_

CM\_\_



## ATTACHMENT A - PARTS LIST

Part #	Item	Description	Price	
	C01708-0007	BAR ASSY	GFI,S/A LOCKING	\$159.83
	D14494-0001	COVER	TOP,TRIM UNIT GFI	\$18.05
	B13139-0001	INSERT	GFI LABEL CARD	\$5.22
	A12642-0001	PAD	GFI,BUMPER	\$0.23
	A14243-0004	CARD	GFI CLEANING	\$85.19
	C05692-0001	LOCK	GFI,MAGNETIC-M1WA	\$39.63
	C22632-0001	DISPLAY	GFI DRIVERS	\$197.60
	B12698-0001	PRINTHEAD	GFI	\$232.75
	B15673-0001	PRINTHEAD ASSY	GFI	\$366.70
	B00010-0432	PIN	GFI FAREBOX ROLL	\$0.21
	D15711-0001	BOARD	GFI FAREBOXES CONVEYOR PLASSY	\$308.97
	D22597-0001	BOARD	GFI FAREBOXES CONVEYOR PLASSY	\$308.97
	D01969-0001		DOOR,GFI VAULT	\$860.70
	B03197-0043	SCREW	VAULT	\$2.96
	A00293-0038	SCREW	VAULT	\$0.20
	A00267-1032		NUT	\$0.20
	B00878-0001	ACTUATOR	GFI COUNTER	\$70.45
	A03224-0012		SCREW	\$0.73
	B00026-0005	BUSHING	3/4 x 1", METAL, GFI	\$2.22
	C03192-0001	ARM	GFI,VAULT	\$165.39
	B03195-0003	FOLLOWER	GFI	\$22.80
	B03196-0001		WASHER	\$0.38
	A00267-3124		NUT	\$0.20
	A00267-3716	NUT	VAULT	\$0.20
	A00893-0001		SPACER	\$31.56
	A00267-0832	NUT	VAULT	\$0.20
	A03193-0001	STUD	VAULT	\$82.93
	B00016-0016	SPRING	GFI VAULT, COMPRESSION	\$3.34
	A00807-0001	SUPPORT	GFI	\$24.97
	B00892-0001	COUNTER	GFI	\$77.52
	B00836-0001		DOOR	\$109.79
	A00874-0001	WASHER	GFI,INDICATOR	\$26.31
	A00294-0006		WASHER	\$0.20
	C00870-0001	CHUTE	GFI	\$62.94
	C03883-0001	MODULE W/WIRE	GFI	\$115.82
	A13889-0001	SOLENOID ASSY	GFI	\$29.33
	D12824-0006	CONTROL/PCB ASSY	GFI,MOTOR	\$141.89
	B14204-0002	BEZEL/WINDOW ASSY	GFI FAREBOX	\$17.52
	A12820-0001	SEAL	GFI,GASKET	\$0.76
	A13140-0001	LABEL	GFI FAREBOX	\$2.08
	D22188-0001	PRINTER ASSY	GFI	\$1,045.00
	B14518-0001	ROLLER ASSY	GFI	\$40.37
	B15078-0001	ROLLER	GFI	\$11.68
	B15046-0001		ROLLER	\$19.17
	B13191-0001	SHAFT ASSY	GFI FAREBOX	\$18.19
	B14533-0002	SHAFT ASSY	ODYSSEY/GFI	\$25.71
	C09132-0006	BELT	GFI/ODYSSEY BILL TRANSPORT,SM	\$2.23
	C14201-0001	BELT	GFI,SM,	\$4.53
	B13859-0002	SENSOR	GFI FAREBOX	\$46.54
	A12796-0001	BRUSH	GFI,STATIC	\$12.11
	A14788-0001	BELT	GFI,SM BILL TRANSPORT	\$1.99
	A14502-0001	SHAFT ASSY	GFI	\$48.05
	A15109-0001	SHAFT ASSY	GFI	\$32.58
	B14240-0001	SHAFT ASSY	GFI	\$61.38
	A16184-0003	ROLLER ASSY	GFI	\$21.60
	B15705-0002	HEAD ASSY	GFI	\$83.36
	B15704-0002	HEAD ASSY	GFI FAREBOX	\$77.66
	A14489-0001	SHAFT ASSY	GFI	\$28.06
	A14501-0001	SHAFT ASSY	GFI	\$17.98
	A14488-0001	SHAFT ASSY	GFI FAREBOX	\$23.06
	B01872-0002	SHIM	GFI,C/M	\$0.19
	B00848-0001	SPRING	GFI ACTUATOR	\$33.76

## ATTACHMENT A - PARTS LIST

Part #	Item	Description	Price	
	A03397-0001	PLUG	GFI,BOTTOM	\$0.21
	B15149-0001	CONVERTOR	LEVEL SHIFTER	\$86.81
	B16059-0001	CABLE ASSY	GFI,PRINTER RIBBON	\$10.20
	A16057-0001	CABLE ASSY	GFI,CONVEYOR RIBBON	\$24.40
	A16058-0001	CABLE ASSY	MOTOR RIBBON	\$27.01
	B18597-0001	ADAPTER	GFI,P.C. BOARD	\$137.26
	B14724-0001	PAD	GFI,KEY	\$10.26
	B03133-0002	DECAL	16 BUTTON KEY PAD	\$3.42
	D17361-021X	BOARD	RTS,NF,ORI GFI FARE DESPLAY	\$227.01
	D00700-0012	CABLE ASSY W/TRIM	GFI,,MAIN	\$137.37
	D00153-XXXX	BOARD	GFI LOGIC PC	\$0.00
	D20001-0007	BOARD	GFI LOGIC PC	\$712.50
	B11973-0G05	ENCODER	GFI,OPTICAL ROTARY	\$50.03
	B00016-0007	SPRING	GFI COMPRESSION	\$0.34
	C00231-0008	BARREL	GFI,LOCK	\$46.08
	A12494-0001	BEARING	GFI FLANGED,	\$1.60
	B14530-0001	GUIDE ASSY	GFI /ODYSSEY FAREBOX PRINTER	\$46.07
	C14675-0003	CABLE	GFI,TRIM ASSY	\$35.01
	B16409-0001	CABLE ASSY	GFI FAREBOX	\$38.00
	D11145-0034	PASS	GFI TRIM UNIT MAINT.	\$0.00
	B17715-0001	HARNESS	GFI,TRIM TESTER	\$15.76
	21859	LOCK	CASH VAULT L7232	\$176.70
	C00410-1602	TUBING	GFI,COIN MECH.	\$0.33
	B00374-0002	KEY	GFI BILL TRANSPORT ABLOY	\$6.27
	C12675-0001	BOARD	GFI REBUILT POWER SUPPLY	\$343.90
	B00808-0001	LOCK	GFI FAREBOX	\$82.65
	A00898-0001	KEY	GFI FAREBOX	\$17.90
	A03341-0001	CYLINDER	CLEVIS ASSY	\$54.58
	C00271-0001	KEY	GFI SERVICE DOOR	\$17.21
	C00271-1000	KEY	GFI SERVICE DOOR	\$17.21
	C15992-0003	BOARD	GFI POWER SUPPLY	\$479.46
	B14461-0001	LINER	GFI FAREBOX BASE	\$19.24
	B00017-0001	POST	GFI FAREBOX	\$17.38
	A14806-2028L	SCREW	GFI P.F.H. 6-32 X 1/4	\$0.19
	A15204-0001	SCREW	GFI F.H. CAP 10-32 X 7/16	\$0.19
	B05655-2003	SCREW	GFI 2-56X1/4 P.H. SEMS	\$0.19
	D15699-0007	CONVEYOR ASSY	GFI TRIM UNIT	\$1,433.64
	C00001-0001	MECHANISM	GFI REBUILT COIN	\$630.39
	RD00371-0002	TRANSPORT	GFI REBUILT BILL	\$250.00
	RD00055-0001	ESCROW	GFI REBUILT COIN	\$82.00
	RD05691-0003	BOX	GFI,REBUILT TALL CASH	time and material
	B00827-0001	BEARING	VAULT TEFLON FLANGED, ALL	\$14.53
	B00818-0004	BEARING	GFI TEFLON PLAIN	\$12.06
	B12541-0002	HOUSING ASSY (SLIDE	GFI KEY	\$226.24
	RD14453-0001	LOCK	GFI REBUILT ELECTRIC	\$198.00
	D01497-0003	ARM W/GRIP	GFI HANDLE	\$267.79
	B00854-0001	SHAFT	GFI,DRIVER RACK	\$62.84
	A01748-0002	GRIP	GFI VAULT HANDLE	\$88.43
	B00892-0002	LEVER	GFI COUNTER VAULT	\$9.21
	C00232-0005	LOCK	GFI VAULT HOUSING	\$55.04
	B15188-0001	BOARD	GFI,P/C DISPLAY	\$195.18
	C01997-0001	BOARD	GFI,PROBE, SUB ASSEMBLY	\$0.00
	A00087-0001	STUD	GFI LOCKING BAR	\$3.02
	A18633-0002	ROLLER	GFI,ECCENTRIC	\$45.55
	B13100-0001	SHIELD	GFI,INSULATION	\$1.14
	A14781-0001	SHAFT	GFI ROLLER	\$3.28
	B14535-0001	PIN	UPPER KEY HOLE	\$1.97
	B12640-0001	MOLDING	GFI,FRT EDGE	\$1.44
	B12641-0002	MOLDING	GFI,SIDE EDGE	\$1.06
	A12795-0004	BRUSH	GFI,STATIC ELIMINATOR	\$2.51
	B13863-0002	NUT	GFI,HEX	\$0.60
	A14604-0001	WINDOW	GFI,CARD LEVEL	\$3.62

## ATTACHMENT A - PARTS LIST

Part #	Item	Description	Price
	A16063-0001	CABLE	GFI,SOLENIOD EXTENSION
	B12516-0001	PULLEY	GFI,15T
	B14532-0001	ARM	GFI PLAFEN
	A12521-0002	WASHER	GFI,THRUST
	A12795-0004	BRUSH	GFI,STATIC ELIMINATOR
	B01872-0013	WASHER	GFI SHIM
	A04639-0001	INSULATION	GFI,MYLAR
	C06275-0001	HEAD ASSY	GFI CARD READER
	A16170-0001	SUPPORT	GFI CARD
	D07106-0002	GUIDE ASSY	GFI,CARD
	A03861-0001	SHIELD	GFI LOGIC BOARD
	B00827-0002	BEARING	FLANGE
	B20515-0003	RING	GFI,K/W
	B01838-0001	CAM ASSY	GFI,LOCK
	A11998-0001	SHAFT	GFI,NO 10 PLAFEN ROLLER
	B15019-0001	KEEPER	GFI/ODYSSEY BEARING
	B01872-0014	WASHER	GFI .010 NYLON SHIM
	B01872-0005	WASHER	GFI,.005 SHIM
	A00169-0002	LEVER	GFI LOCK
	B01785-0004	KEY	GFI,PAPALLEL 1/2" LONG
	A12789-0001	PLUNGER	GFI
	A12846-0001	SPRING	GFI,PLUNGER
	A00891-0001	GEAR	GFI,MITER
	A00064-0001	SPRING	GFI COIN SENSING
	A00007-0001	GEAR	#2 COIN MECH.
	A00011-0001		PIN
	A00012-0001		SLEEVE
	A00015-0001	HUB & BRG	GFI
	A00091-0002	BELT	GFI,COIN MECH, SMALL
	A00092-0001	BELT	GFI,BILL TRANSPORT (DRIVE), LRGE
	A00101-0001		CLAMP
	A00156-0001	WINDOW	GFI FAREBOX
	A00157-0001	FILTERS	GFI FAREBOX
	A00164-0001	RETAINER	GFI,SLIDE
	A00165-0001		STRIPPER
	A00166-0001		STRIPPER,GFI
	A00170-0002	PIN	GFI
	A00178-0001	SUPPORT	LOCK HOUSING
	A00184-0001	ROLLER	GFI,IDLER
	A00186-0001	GEAR	GFI,BILL TRANSPORT WORM
	A00250-0001	BEARING	FLANGED, FAREBOX, ALL
	A00251-0002	RING	GFI FAREBOX
	A00253-1824	RIVET	GFI
	A00257-2014		SCREW
	A00257-2240		SCREW
	A00259-0832	NUT	ESCROW
	A00262-L120	PIN	GFI FAREBOX SPIRAL
	A00262-M114	PIN	GFI
	A00263-2049		SCREW
	A00263-2107		SCREW
	A00293-0007	SCREW	4-40 X 1/2 SOCKET HEAD
	A00293-0012		SCREW
	A00307-0008	RIVET	GFI,POP
	A00375-0001	PAD	GFI,BUMPER
	A00379-0017	RING	GFI,1/4" RETAINING
	A00379-0018		RING
	A00379-0022	E-RING	GFI,RETAINING
	A00396-0002	BULB	GFI FROSTED
	A00407-0002	HANGER	GFI,CABLE
	A00498-0003	EDGE	GFI,TRIM
	A00845-0001	PIN	GFI
	A00866-0001	BLOCK	GFI,SECURITY LOCK SLIDE

## ATTACHMENT A - PARTS LIST

Part #	Item	Description	Price
A00884-0001	GEAR	GFI	\$72.13
A00915-0002	SWITCH	GFI	\$13.65
A00936-0001	GUIDE	FAREBOX GFI	\$1.65
A00940-0001	CLIP	GFI,CORD	\$0.60
A01798-0001	WASHER	GFI FAREBOX	\$1.52
A03069-0001	BEARING	GFI	\$17.13
A03139-2037	SCREW	SEMS	\$0.33
A03200-0001	BUMPER	GFI FAREBOX	\$0.20
A03206-0001	GUIDE	GFI FAREBOX	\$3.75
A03226-2016	SCREW	8-32X1/2 SKT.A FLAT	\$0.20
A03867-0001	SHIELD	GFI	\$3.62
A03877-0001	FILTERS	GFI	\$2.99
A04026-0002	COLLAR	GFI	\$3.42
A04027-0002	PIN	GFI,SECURITY	\$0.20
A05920-0001	SCREW	BREAKAWAY	\$1.29
B00010-0220	PIN	GFI	\$0.20
B00010-0314	PIN	GFI,ESCROW ROLL	\$0.20
B00010-0424	PIN	ROLL	\$0.19
B00010-0436	PIN	ROLL	\$0.33
B00014-0001	GEAR	GFI FAREBOX	\$12.82
B00016-0001	SPRING	GFI COMPRESSION	\$0.83
B00016-0006	SPRING	GFI COMPRESSION	\$0.34
B00016-0014	SPRING	GFI COMPRESSION	\$0.34
B00016-0011	SPRING	GFI COMPRESSION	\$3.23
B00034-0001	STRIPPER	GFI,COIN	\$11.61
B00036-0001	PLATE	GFI	\$75.20
B00050-3101	NUT	GFI,STOP	\$0.20
B00054-0003	SPRING	GFI EXTENSION	\$0.65
B00054-0004	SPRING	GFI EXTENSION	\$1.42
B00060-0001	BUSHING	GFI,1/4 x 1/16, METAL	\$1.44
B00061-0003	RING	RETAINING	\$0.20
B00125-0001	INSTALLATION KIT	GFI FAREBOX BOLTS	\$7.92
B00199-0001	MOTOR	GFI BILL TRANSPORT	\$30.47
B00202-0001	POST	GFI,DRIVE PULLEY	\$5.61
B00207-0001	ROLLER	GFI FAREBOX	\$22.21
B00209-0001	PULLEY	GFI,T/D	\$4.39
B00349-0001	PLATE	DETECTOR APERTURE	\$3.79
B00373-0001	LOCK	GFI	\$33.57
B00373-0002	LOCK	GFI	\$24.92
B00430-0001	SHIELD	GFI,BLACK	\$6.04
B00488-0001	SOLENOID W/PLUG	GFI	\$32.50
B00750-0001	MOTOR	GFI, COIN MECH.	\$62.87
B00756-0001	STRAP	GFI,GROUND	\$16.14
B00814-0001		RACK GFI	\$106.59
B00818-0003	BUSHING	GFI	\$8.99
B00827-0003	BEARING	FLANGED, FAREBOX, ALL	\$17.58
B00835-0001	LEVER	GFI	\$46.97
B00876-0002	CATCH	GFI	\$56.27
B00881-0001	GUIDE	LH	\$54.98
B00881-0002	GUIDE	RH	\$54.98
B00883-0001	ACTUATOR	GFI FAREBOX	\$83.36
B00903-0001	SOCKET ASSY	GFI	\$1.97
B01212-0036	FUSE	GFI	\$0.66
B01257-0001	SHIELD	GFI,CLEAR	\$4.99
B01272-0003		SLIDE	\$4.63
B01278-0016		BLOCK	\$42.46
B01444-0001	BUSHING	1/2 x 10/16, METAL, GFI	\$3.91
B01458-0001		SPACER & PIN	\$11.84
B01461-0001	GASKET	GFI,FAREBOX	\$0.60
B01474-0001	CABLE	GFI,FAREBOX POWER	\$18.35
B01475-0001	CABLE	GFI FAREBOX UNIT POWER	\$25.00
B01753-0001	SWITCH	GFI FAREBOX ELECT. LOCK	\$34.65

## ATTACHMENT A - PARTS LIST

Part #	Item	Description	Price	
	B01762-0001	GLASS	SMALL	\$2.65
	B01782-0001	ACTUATOR	GFI,BRAKE	\$239.40
	B01784-0001	SHAFT W/GEAR	MITER	\$220.22
	D00811-0001	SHAFT W/GEAR	MITER	\$156.53
	B01785-0001	KEY	GFI	\$0.91
	B01785-0002	KEY	PARALLEL	\$4.05
	B01832-0001	CAM	GFI	\$233.63
	B01847-0001	CLUTCH ASSY	GFI ONE WAY	\$425.39
	B03062-0007		SHAFT	\$49.68
	B03773-0001	SHIELD	GFI,FAREBOX LOCK	\$1.94
	B01781-0001	HANDLE	GFI	\$418.12
	B05328-0001	HANDLE	GFI	\$0.00
	B05678-0001	RETAINER	GFI	\$10.51
	B05689-0002	BLOCK	GFI,SECURITY	\$38.87
	B07126-0001	DECAL	GFI,COIN	\$1.54
	B07127-0001	DECAL	GFI,BILL	\$1.44
	C00124-0001	COVER	GFI	\$4.13
	C00133-0002	PROBE	GFI,DATA	\$1,369.90
	C00228-0001	WINDOW	GFI,BILL TRANSPORT	\$14.86
	C00233-0010	HANDLE	CASHBOX	\$24.10
	C00344-0001	DETECTOR	GFI,COIN THROAT	\$39.20
	C00358-0002	READER	GFI,COIN	\$336.60
	C00916-0001	WINDOW	GFI, ESCROW	\$26.10
	C01299-0005	KEYBOARD	GFI,P/C	\$33.29
	C01459-0001	ESCUTCHEON	GFI	\$1.90
	C01618-0005	COVER	CASHBOX	\$92.64
	C01780-0001	STOP	GFI	\$280.07
	C01783-0001	GEAR	GFI TAKE-UP ASSY	\$416.22
	C01786-3055	SCREW	GFI	\$0.33
	C03385-0002	CYLINDER	S/A AIR	\$133.59
	C03881-0001	CASH ID	GFI	\$86.54
	C05912-0003	ACTUATOR	GFI,LOCK	\$16.67
	C12379-0001	COVER ASSY	WELDMENT	\$22.86
	D00013-0001	PAD	GFI,BILL TRANSPORT	\$16.56
	D00066-0001	WINDOW	GFI,ESCROW FRAME	\$13.96
	D00371-0002	TRANSPORT	GFI,BILL	\$511.08
	D00377-0002	BOARD	GFI,COIN THROAT DETECTOR	\$479.46
	D00711-0002	BOARD	GFI,BILL TRANSPORT	\$124.06
	D01746-0001	HARNESS	GFI, TOP PANEL	\$36.95
	C22633-0001	BOARD	GFI,INTERFACE	\$309.01
	D03182-0001	BOARD	GFI,INTERFACE	\$0.00
	D03183-0001	MULTIPLEXER	GFI	\$188.28
	D03184-0001	BOARD	GFI	\$209.64
	D03798-0001	TRANSMITTER	GFI	\$86.27
	D03825-0001	BOARD	GFI BATTERY(see s/c 217524)	\$53.41
	D14453-0001	LOCK	GFI ELECTRIC FAREBOX	\$376.01
	B20946-0002		E-PROM(20400-2.24),GFI LOGIC BOARD	\$73.15
	D23696-0004		TRANSPORT ASSY,GFI ODYSSEY BILL	\$551.87
	C26300-0001		VALIDATOR ASSY,GFI ODYSSEY BILL (NEW)	\$415.86
	C23931-0019P		VALIDATOR ASSY,GFI COIN	\$235.57
	C23931-1019P		VALIDATOR ASSY,GFI COIN	\$235.57
	D22832-0001		OCU ASSY,ODYSSEY-new	\$1,247.59
	C23908-0001		MECHANISM ASSY,GFI BYPASS	\$133.08
	D22146-0002		LOCK ASSY,GFI ELECTRONIC	\$310.73
	D22146-0003		LOCK ASSY,GFI ELECTRONIC	\$310.73
	D25718-0004		BOARD ASSY,ODYSSEY PC CONTROLLER	\$961.87
	D22170-STDY-		COVER,W/SATURN 6000 SCR,GFI TOP	time and material
	D22170-SAT6		COVER,W/SATURN 6000 SCR,GFI TOP	\$2,337.00
	D21149-2006		BOARD ASSY,ODYSSEY MOTHER	\$145.35
	B06097-0001		MOUNT,GFI LAMP	\$4.27
	C23922-0003		CABLE,GFI ODYSSEY EXTERNAL 3 FT OCU	\$43.30
	C23922-0003		CABLE,GFI ODYSSEY EXTERNAL 3 FT OCU	\$43.30

## ATTACHMENT A - PARTS LIST

Part #	Item	Description	Price
	C22167-0004	READER ASSY,GFI ODYSSEY SWIPE CARD	\$162.43
	C25236-0001	JUNCTION,GFI ODYSSEY PC BOARD TOP COVER	\$120.61
	A01271-0001	SOCKET,GFI LAMP	\$1.99
	A00487-0001	SOCKET,GFI LAMP	\$1.85
	D22192-0001	FRAME & ASSOCIATED ASM,ODYSSEY TRIM	\$3,776.25
	B22271-0001	SPEAKER ASSY,GFI ODYSSEY	\$11.39
	C22807-0007	CONVERTER,ODYSSEY DC-AC DVDC	\$378.10
	C22292-0007	CABLE ASSY,ODYSSEY BILL VALIDATION	\$32.29
	C22267-0003	CABLE ASSY,ODYSSEY COIN VALIDATION	\$12.05
	C22294-0002	CABLE ASSY,GFI ODYSSEY WIRING	\$18.87
	B22263-0001	CABLE ASSY,GFI ODYSSEY DCU	\$23.36
	B22273-0002	SWITCH,GFI ODYSSEY DOOR	\$39.04
	B22266-0001	CABLE ASSY,GFI ODYSSEY TRIM	\$8.59
	B22265-0001	CABLE ASSY,ODYSSEY COMM. & POWER	\$34.95
	B22263-0001	CABLE ASSY,ODYSSEY INTERNAL OCU	\$23.36
	C22291-0001	CABLE ASSY,ODYSSEY POWER SUPPLY	\$17.52
	C22290-0002	CABLE ASSY,ODYSSEY RIBBON	\$16.88
	B23634-0001	BOARD,ODYSSEY MOTOR CONTROL PC	\$73.39
	B22193-0001	BOARD,ODYSSEY MOTOR SENSOR PC	\$43.78
	A22244-0001	WASHER,ODYSSEY SPACER	\$0.57
	A01793-0003	O-RING,ODYSSEY (.864 ID)	\$0.85
	A22240-0001	PULLEY,ODYSSEY (40T)	\$1.74
	C09132-0023	BELT,ODYSSEY KEVLAR CORD	\$7.76
	A22237-0001	PULLEY,ODYSSEY LOWER FRONT	\$1.40
	A22236-0001	PULLEY,ODYSSEY 30T	\$1.37
	B09037-0003	WASHER,ODYSSEY SPRING	\$0.60
	B00054-0014	SPRING,ODYSSEY EXTENSION	\$0.74
	A21260-0001	GEAR REWORK,ODYSSEY WORM	\$6.42
	B21250-0001	CRANK/CAM,ODYSSEY	\$2.56
	11334-4	RING,ODYSSEY "C" RETAINING	\$0.20
	A21249-0001	PIN,ODYSSEY DRIVE	\$2.79
	B22284-0001	CABLE ASSY,ODYSSEY ELEC.LOCK	\$4.58
	C22830-0001	CIRCUIT,ODYSSEY OCU	\$63.06
	D22831-0001	KEYPAD,ODYSSEY OCU	\$21.52
	C22833-0001	PLATE,ODYSSEY OCU KEYPAD	\$13.16
	C22835-0001	LABEL,ODYSSEY OCU KEYPAD	\$2.91
	B22748-0002	DISPLAY,ODYSSEY OCU	\$97.44
	D22828-0001	BOARD,ODYSSEY OCU PROCESSOR PC	\$654.08
	C22829-0001	CABLE,ODYSSEY INTERNAL OCU	\$24.17
	A18857-0002	PIN,ODYSSEY KEY HOLE	\$0.94
	B25544-0001	BRACKET,ODYSSEY TOP MOUNT	\$57.65
	B25544-0011	BRACKET,ODYSSEY TOP MOUNT	\$23.00
	B25544-0012	BRACKET,ODYSSEY BOTTOM MOUNT	\$16.44
	B25544-0004	COUPLING,ODYSSEY	\$91.40
	B25544-0013	CASTING ODYSSEY TAPPED	\$5.73
	B25544-0015	HOLE,ODYSSEY CASTING THROUGH	\$7.12
	C00331-0001	MOTOR,GFI BILL TRANSPORT	\$54.39
	D22070-0003	CASSETTE ASSY,ODYSSEY	\$147.21
	B23980-0001	BEZEL,ODYSSEY.	\$7.12
	A24812-0002	SHIELD,ODYSSEY STOP	\$12.82
	A16034-2019L	SCREW,ODYSSEY PH Ph Hd	\$0.20
	RD23930-1019P	VALIDATOR,ODYSSEY REBUILT COIN	\$148.00
	RC23931-1019P	VALIDATOR,ODYSSEY REBUILT COIN	\$148.00
	RD22832-0001	OCU ASSY,ODYSSEY REBUILT 30 BUTTON	time and material
	RC26300-0001	VALIDATOR,ODYSSEY BILL (REB)	\$146.00
	RD00711-0002	BILL TRANSPORT BOARD	\$50.00
	RD03825-0001	BOARD,ODYSSEY BATTERY	\$40.00
	RC00358-0001	BOARD,ODYSSEY REBUILT COIN READER	\$209.00
	RC00133-0002	DATA PROBE	\$390.00
	RD21126-0001	BOARD,ODYSSEY REBUILT MICROPROCESSOR	\$222.00
	RD23696-0004	TRANSPORT, ODYSSEY REBUILT BILL	\$256.00
	RD22192-0001	TRIM UNIT,ODYSSEY REBUILT	\$437.00

## ATTACHMENT A - PARTS LIST

Part #	Item	Description	Price
	RC15992-0003	BOARD,GFI REBUILT POWER SUPPLY	\$174.00
	B25544-0014	CASTING,ODYSSEY	\$5.73
	C22543-0001	CABLE ODESSY GFI	\$26.94
	RD22146-0002	LOCK ASM ODYSSEY REBUILT	\$103.00
	RD22170-SAT6	COVER,ODYSSEY REBUILT	time and material
	D23623-0001	ODYSSEY MOLDED COIN CUP	\$3.02
	B22060-0001	S/A LAMP PC BD-COIN CUP ODYSSEY	\$16.17
	A23621-0001	PIVOT PIN COIN CUP INSERT ODYSSEY	\$0.71
	D23141-0003	INSERT COIN CUP ODYSSEY	\$3.40
	B00054-0047	EXTENSION SPRING ODYSSEY	\$0.28
	B22091-0001	SWIPE READER LAMP PC BD ODYSSEY	\$35.24
	C22494-0003	DISPLAY COVER ASM ODYSSEY	\$29.69
	RD15711-0001	BOARD,GFI REBUILT CONVEYER PC	\$134.00
	RD22597-0001	BOARD,GFI REBUILT CONVEYER PC	\$134.00
	RD25718-0004	BOARD ASSY,GFI REBUILT CONTROLLER PC	\$295.00
	RR00248-0002	CASE ASSY,GFI REBUILT UPPER	time and material
	B21455-0002	PROBE, DATA (LONG PCB)	\$29.78
	B05900-0001	HOUSING ASSY,GFI CASH BOX LOCK	\$152.27
	<b>CardQuest (Part Number C25500-CUST)</b>		
	025718-004	S/A CONTROLLER BOARD	\$961.88
	D25907-0001	S/A JUNCTION BOARD	\$277.84
	B25365-0001	S/A DATA PORT P.C.B. - HI SPEED	\$52.44
	C22494-0001	S/A DISPLAY COVER	\$30.64
	D22832-0001	S/A OPERATORS CONTROL UNIT - O.C.U.	\$1,247.59
	C23922-0003	S/A CABLE, O.C.U.	\$43.30
	C04261-0080	SERVICE COVER LOCK, COMBO MB-0	\$41.08
	C04789-0080	SERVICE COVER - COMB, MB-0	\$15.00
	C25999-0001	S/A GEMPLUS C-S RDR W/CABLE	\$260.91
	C25913-SET	COVER LABELS - CARD QUEST	\$15.92
	<b>CardQuest Integral TRiM Unit Spare Parts</b>		
	D22192-0004	S/A TRIM 2.0 FOR CARD QUEST COMPLETE	\$3,776.25
	D22191-0001	S/A CHASSIS - TRIM	\$1,996.50
	D21126-0007	S/A PCB, CONTROL-TRIM 2 (W/OBAT, SOCKE	\$675.67
	D23130-0005	S/A PCB, MOTOR CONTROL	\$189.19
	C12675-0001	S/A P.C.B. POWER SUPPLY	\$460.62
	D22597-0001	CONVEYOR P.C. BOARD ASSEMBLY	\$308.99
	D22188-0001	S/A PRINTER - TRIM	\$1,045.00
	D23903-0001	S/A CONVEYOR - TRIM	\$1,476.64
	B15673-0001	S/A PRINT HEAD ASSY.	\$366.70
	B12698-0001	PRINT HEAD KHT-51-8M PEI-GF	\$232.75
	C14201-0001	SYNCHRONOUS BELT MXI-175 GROOVES	\$4.53
	A14788-0001	BELT, PGGT-83T	\$2.00
	C09132-0006	GROOVED TRIMMING BELT 40	\$2.23
	D22070-0003	S/A CARD CASSETTE	\$147.21
	B18551-0001	SHAFT NO. 9 ANTI STATIC	\$15.13
	B18552-0001	SHAFT NO. 7-B ANTI STATIC	\$14.88
	A14243-0004	CLEANING CARDS	\$85.19
	<b>VENDSTAR TVM 3 SPARE PARTS - Sell Price</b>		
	A11764-KEY	Key, Alarm Box A-126	\$6.18
	A22339-0001	Key, TRiM Cassette #1561	\$3.23
	A26990-0001	PAPER , ROLL-RECEIPT - THERMAL TVM3	\$4.42
	A27013-0001	BOOT FOR CAPACITOR, (710-00-0042)	\$7.60
	A27365-0001	LAMP, LED - WASHLIGHT	\$23.34
	A28046-0001	KIT, WASHLIGHT TVM	\$207.10
	B00010-0420	ROLL PIN, 1/8 X 5/8 (purchase with C23847-0001)	\$0.20
	B24015-0011	FUSE, ATO SERIES (30 AMP)	\$0.29
	B24192-0001	SOLENOID, COIN INPUT	\$39.36
	B24517-0001	KEY, OPEN-BANKNOTE ALPHA 416	\$23.75
	B24518-0001	KEY, RELEASE - BANKNOTE ALPHA 415	\$23.75
	B25314-0002	S/A CABLE, BACKLIGHT (W64)	\$32.82
	B26622-0001	T-HANDLE, TVM	\$234.54
	B26692-0001	PIN PAD, VERIFONE VX700 -M270-141-11-USA	\$1,282.50

## ATTACHMENT A - PARTS LIST

Part #	Item	Description	Price
	B26868-0001	S/A PCB, UNIVERSAL SENSOR	\$51.30
	B26869-0001	S/A PCB, TICKET CHUTE DETECTOR	\$31.92
	B26972-0001	CONTROLLER, BATTERY - UPS	\$378.73
	B26981-0001	CAPACITOR, BLOWER-16 mfd (450-20-0029)	\$22.56
	B27087-0001	S/A, PCB, DOOR SENSOR-LASER	\$56.57
	B27123-0001	S/A, SPEAKER - TVM3	\$39.22
	B27302-0001	ADAPTOR, RJ45-DB25M-MODIFIED	\$18.73
	B27319-0001	S/A, SOLENOID, BENT COIN RETURN	\$120.08
	B27401-0001	DRIVE, STATIC MEMORY-TVM3 COMPUTER	\$266.00
	B27409-0001	S/A, POWER DIST. MTG.	\$860.70
	B27410-0001	S/A, MEDIA PCB	\$1,207.45
	C03881-0001	S/A RECEIVER, CASHBOX I.D. (HARMONICA)	\$86.55
	C23847-0001	DOOR, COIN CUP	\$38.53
	C24916-0002	Alarm Box Complete	\$655.50
	C25056-0001	READER,CARD-MBR211	\$356.50
	C25092-0001	S/A, PCB, KEYPAD, TVM2 DISPLAY	\$252.65
	C25759-0011	Key, Coin Cashbox & Hopper Rel. - ME011	\$20.19
	C25759-0012	Key, TRIM Release - ME012	\$20.19
	C25759-0013	Key, Coin Cashbox/Hopper Interior - ME013	\$10.69
	C25761-0012	Key, Light Fixture - MG012	\$10.69
	C25761-0013	Key, Coin & Bill Release - MG013	\$10.69
	C25761-0014	Key, Coin Cashbox Rear Rel. - MG014	\$20.19
	C25761-0015	Key, Coin Acceptor Interior Acces - MG015	\$20.19
	C25761-XXXX	Key, Front Door - MGXXX (Varies by Customer)	\$10.69
	C26802-0001	S/A PCB, TEMP/AMB LIGHT SENSOR -TEMP	\$104.74
	C26802-0002	S/A PCB, TEMP/AMB. LIGHT SENSOR -TEMP/LT	\$153.62
	C26815-0001	S/A, PCB, LVDS INTERFACE DAUGHTER BOARD	\$801.39
	C26906-0001	S/A PCB, DOCKING CONNECTOR-HOPPER	\$138.94
	C26906-0002	S/A PCB, DOCKING CONNECTOR-CM	\$198.96
	C26906-0003	S/A PCB, DOCKING CONNECTOR-BV	\$156.32
	C26927-0001	S/A PCB, AC CONTROL	\$262.31
	C26931-0001	S/A, HEATER, AUXILIARY	\$448.40
	C26932-0001	S/A, BOX, AC JUNCTION	\$344.33
	C26966-0001	S/A PCB, FAN/AUDIO CONNECT	\$49.02
	C26973-0001	POWER SUPPLY, AC-DC - UPS	\$695.25
	C26974-0001	POWER SUPPLY, DC-DC 24V	\$188.81
	C26975-0001	POWER SUPPLY, DC-DC 12V	\$188.81
	C26977-0001	S/A PCB, TERMINAL CONVERTER-TYPE 2	\$132.67
	C27005-0001	S/A PCB, TERMINAL CONVERTER-TYPE 1	\$109.25
	C27006-0001	S/A PCB, TERMINAL CONVERTER-TYPE 3	\$58.91
	C27045-0001	S/A, PCB, LED DRIVER - (PHR-6RJ2560L)	\$85.50
	C27072-0001	S/A PCB, DOCKING CONNECTOR-TRIM	\$123.29
	C27073-0001	S/A, PCB, LAMP	\$33.49
	C27086-0001	S/A PCB, SOLENOID-COIN	\$53.49
	C27086-0002	S/A PCB, SOLENOID-DOOR	\$57.19
	C27157-0001	S/A,CABLE, SWITCH-LOWER LOCKBAR	\$17.53
	C27160-0001	S/A,CABLE,PIEZO SENSOR	\$17.50
	C27162-0001	S/A,CABLE,SENSOR-COIN ENTRY	\$48.56
	C27631-0001	KEY, RELEASE-BANKNOTE STS CODE 1 (J9432)	\$5.70
	D23395-0001	S/A, ELONGATED CARD CASSETTE	\$370.50
	D24361-0004	S/A,LCD DISPLAY, INSYNC LED (TVM3)	\$1,510.50
	D25632-0001	S/A, COIN CUP	\$239.86
	D26686-0005	S/A,CARD READER ONLY (UIC)	\$683.05
	D26686-0007	S/A, CARD RDR W/VERIFONE VX-700	\$1,300.08
	D26701-0002	S/A PCB, HOPPER/COIN MECH./ BV -CM	\$337.84
	D26701-0003	S/A PCB, HOPPER/COIN MECH./ BV -BV	\$334.15
	D26703-0001	S/A PCB, ALARM	\$539.70
	D26785-0001	S/A, PCB, POWER DISTRIBUTION	\$1,022.47
	D26814-0001	S/A PCB, DOOR COMPONENT INTERFACE	\$883.50
	D26828-0001	S/A PCB, MEDIA CONVERTER	\$1,122.56
	D26829-0001	S/A PCB, 10/100 COPPER/FIBER DAUGHTER	\$379.86
	D26866-0001	S/A PCB, TRIM CONFIGURATION	\$134.52
	D26867-0001	S/A, PCB, DC UPS CONTROLLER	\$409.68
	D26928-0001	S/A, CIRCUIT BREAKER BOX	\$889.65
	D27551-0001	S/A COMPUTER-TVM3	\$1,567.50



## ATTACHMENT A - PARTS LIST

Part #		Item	Description	Price
		M-26350-3SM	MANUAL, TVM3 O&S	\$133.95

ITEM # F9

**DATE:** January 8, 2014

**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 OPS14-03, SUPERVISOR  
VEHICLE ON-BOARD VIDEO SURVEILLANCE SYSTEM (OBVSS)**

### **FORM MOTION**

Authorize the Interim CEO/General Manager to award Contract OPS14-03 to Safety Vision LLC of Houston, Texas, for the provision of Supervisor Vehicle On-Board Video Surveillance System (OBVSS) for Omnitrans' fleet of fifteen supervisor vehicles and two security vehicles beginning January 20, 2014, with a six-month installation period and up to four years warranty and maintenance services, ending no later than July 19, 2018, in the amount of \$123,404, plus a ten percent contingency of \$12,340, for a total not-to-exceed amount of \$135,744.

### **BACKGROUND**

The supervisor security vehicle video surveillance system will provide Omnitrans' supervisors and security personnel a passive means of monitoring incidents and events and will be used to provide evidence for criminal prosecution or civil claims. The surveillance system will include wireless transmitters and network interface at the East Valley and West Valley facilities.

Staff conducted an analysis to determine the optimum amount of vehicles required to support operations. The Operations Department currently has fifteen vans that are utilized by the following department personnel: (17) Field Supervisors, (6) Trainers, (2) Analysts, (1) Application Specialist and other Agency Departments, as needed. Field Supervisors are in the field eighty percent of their shift. In order to provide coverage to Omnitrans' service area, Field Supervisor shifts are staggered and overlapping to ensure adequate manpower during peak hours. There is little allowance for when a vehicle is down for service or repairs. In addition, if Omnitrans does not contract out for the sbX bus drivers, Omnitrans must hire one additional Field Supervisor for a total of eighteen.

On October 2, 2013, Omnitrans' Board of Directors authorized the release of Request for Proposals RFP-OPS14-03. Staff released the RFP, notices were published in two local newspapers of general circulation and posted on Omnitrans' online bidding system which was

distributed to twenty registered firms. The Independent Cost Estimate for this solicitation was \$141,000.

Two firms were represented at the pre-proposal conference October 17, 2013. Two proposals were received prior to the November 13, 2013, deadline and both were deemed responsive.

The proposals were evaluated based upon the criteria set forth in the RFP. A total of 100 points were possible. The following firms ranked from highest to lowest:

		Safety Vision LLC	Rail Services Corp.
Quoted Price		\$123,404	\$405,635
Criteria	Points Possible		
Responsiveness to Requirements of Scope	15	13.3	13.0
Work Plan	40	29.5	26.3
Experience	25	20.8	19.5
Price	20	20.0	6.1
<b>TOTAL</b>	<b>100</b>	<b>83.5</b>	<b>64.9</b>

Safety Vision LLC had the highest-ranked, responsive and responsible proposal that met the requirements of the RFP, proposing the best technical solution and offering the lowest price. The price of \$123,404 is deemed fair and reasonable as it is \$282,231 less than the next lowest proposed price of \$405,635, and is less than the independent cost estimate of \$141,000.

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

### **FUNDING SOURCE**

The cost associated with this procurement is budgeted in the Safety & Security Department's Capital Funds as follows:

<b>FUNDING</b>	<b>GRANT</b>	<b>YEAR</b>	<b>PROJECT NAME</b>	<b>INTERNAL ORDER</b>	<b>AMOUNT</b>
Prop 1B	6161-0002	FY09	Video Surveillance Equipment	K091B102P	\$135,744

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

## **CONCLUSION**

By awarding this project, Omnitrans stands to benefit both from increased passenger and employee protection, risk mitigation, and savings through increased evidence for support in criminal cases or civil claims.

PSG:JMS:CV



## CONTRACT AGREEMENT

between

Safety Vision LLC  
6100 West Sam Houston Parkway North  
Houston, TX 77041

(hereinafter "CONTRACTOR")  
Telephone: 713-896-6600  
Fax: 713-896-6640

And

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

### CONTRACT DOCUMENTS

**CONTRACT NO.  
OPS14-03**

**Supervisor Vehicle Onboard Video  
Surveillance System (OBVSS)**

Contract Amount: \$123,404

#### Omnitrans Project Manager:

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

#### Contract Administrator:

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

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ATTACHMENT A - SCOPE OF WORK

ATTACHMENT B - COMPLIANCE MATRIX

ATTACHMENT C – SPECIAL CONDITIONS

ATTACHMENT D – SENSITIVE SECURITY INFORMATION (SSI) REQUIREMENTS

This Agreement is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2013 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and SAFETY VISION 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 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**

This Agreement shall commence on \_\_\_\_\_, and continue in effect through \_\_\_\_\_, unless terminated as specified in Paragraphs 8 and 9. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

The duration of this contract is approximately four months for project delivery and installation followed by a four-year warranty/maintenance period to commence after final acceptance of project installation.



The warranty/maintenance period start and end dates may change based on the date of final acceptance by Omnitrans.

### 3. COMPENSATION

For CONTRACTOR's full and complete performance of its obligations under this Agreement, OMNITRANS shall pay CONTRACTOR on a LUMP SUM basis as stated herein in accordance with the provisions of this Section, and subject to the maximum cumulative payment obligation.

<b>Milestone</b>	<b>Description</b>	<b>Contract Value</b>
A	Complete Preliminary and Final Design Review	\$18,511
B	Complete Proof of Performance (PoP) Test	\$6,170
C	Complete delivery of hardware and equipment	\$34,385
D	Complete installation and conditional acceptance	\$22,045
E	Complete Documentation and Training	\$6,170
F	Complete Final Acceptance	\$18,511
G	Two (2) year Service and Warranty Period	\$6,715
H	Warranty Years 3 and 4	\$10,897
Total		\$123,404

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed One Hundred Twenty-Three Thousand Four Hundred and Four Dollars (\$123,404), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

### 4. INVOICING AND PAYMENT

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

CONTRACTOR shall submit invoices in duplicate to:

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

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

- Contract number
- Purchase Order number
- Invoice number
- Description of delivery
- Delivery Date
- Total quantity delivered
- Milestone and applicable taxes
- Information as requested by OMNITRANS

- B. OMNITRANS shall remit payment within thirty (30) calendar days of approval of the invoices by OMNITRANS' Project Manager. Capital Projects are paid on the first Thursday of each month.

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. SOFTWARE ESCROW**

The Contractor shall be required to provide a complete set of source code and sufficient documentation in Escrow to permit modification of the delivered software without the necessity of contacting the Contractor in the event the Contractor is unwilling or unable to undertake such modifications. All necessary ancillary software (command files, etc.) necessary for performing a system build from uncompiled code shall be provided. The Contractor must also supply the necessary system level documentation to allow successful creation of a run-time system in the event of modifications made by Omnitrans. Proposers are required to explain, in detail, the documentation to be supplied. Samples and guarantee of content will be requested after proposal deadline and prior to contract award.

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

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

## 7. NOTIFICATION

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

To OMNITRANS:

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

To CONTRACTOR:

Safety Vision LLC  
6100 West Sam Houston Parkway North  
Houston, TX 77041-5113  
Attn: Steve Campbell, Account Executive  
Email: scampbell@safetyvision.com

## 8. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES

### A. OMNITRANS' Project Manager

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

Project Manager: Joseph Tibiita.

- 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>
Jose L Rodriquez	Installation Manager/Project Manager
Rick Patterson	ICOP/IT Liaison
David Nichol	ICOP/IT Liaison
Christian Wilkins	ICOP/IT Liaison
John Sparrow	Installation Specialist
Steve Campbell	ICOP 24 Hour Customer Service
Adrien P. Davis	Accounting/Billing

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

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

**9. 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 27, Compliance with Lobbying Policies, of this Agreement, then OMNITRANS may immediately terminate this Agreement.
- D. In the event OMNITRANS terminates this Agreement as provided in this Section, OMNITRANS may procure, upon such terms and in such manner as OMNITRANS may deem appropriate, Work similar in scope and level of effort to those so terminated, and CONTRACTOR shall be liable to OMNITRANS for all of its costs and damages, including, but not limited, any excess costs for such Work.
- E. All finished or unfinished documents and materials produced or procured under this Agreement shall become OMNITRANS' property upon date of such termination.
- F. If, after notice of termination of this Agreement under the provisions of this Section, it is determined for any reason that CONTRACTOR was not in default under the provisions of this Section, or that the default was excusable under the terms of this Agreement, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 8, Termination for Convenience.
- G. The rights and remedies of OMNITRANS provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

## **11. ASSIGNMENT**

This Agreement, any interest herein or claim hereunder, may not be assigned by CONTRACTOR either voluntarily or by operation of law, nor may all or any part

of this Agreement be subcontracted by CONTRACTOR, without the prior written consent of OMNITRANS. Consent by OMNITRANS shall not be deemed to relieve CONTRACTOR of its obligations to comply fully with all terms and conditions of this Agreement.

## 12. SUBCONTRACTING

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

<b>Subcontractor's Name and Address</b>	<b>Work to Be Performed</b>
ESP Services 10963 Cutten Road, B101 Houston, TX 77066	Installation of camera system and wireless access points

## 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. **Errors and Omissions Liability:** \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$3,000,000 aggregate or,
- D. **Professional Liability:** \$1,000,000; per occurrence and aggregate.
- E. **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.*
- F. **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.*

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

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.

Price Adjustments:

- A. Any change in the contract that causes an increase or decrease in cost 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.

## **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. PRECEDENCE**

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, including Attachment A, Scope of Work, Attachment B, Compliance Matrix, Attachment C, Special Conditions, and Attachment D, SSI Requirements; (2) provisions of RFP No. RFP-OPS14-03 and (3) CONTRACTOR's proposal dated November 8, 2013.

### 36. 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

SAFETY VISION LLC

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

\_\_\_\_\_  
Michael Ondruch  
Chief Financial Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Federal Tax I.D. No. 76-0390640

DP\_\_\_\_

CM\_\_\_\_

## **ATTACHMENT A – SCOPE OF WORK**

### **OPS14-03 SUPERVISOR VEHICLE OBVSS**

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## **I - INTRODUCTION AND OVERVIEW**

### **1.1 Introduction:**

- 1.1.1 Contractor shall design and install an onboard video/audio surveillance system for up to fifteen supervisor vehicles and two security vehicles.

### **1.2 Project Overview:**

- 1.2.1 The onboard video/ audio surveillance system and information data collection system shall integrate secure onboard systems with central video management, maintenance, and archiving functionality. These elements shall be linked by a Wireless Communications System at the two facilities.
- 1.2.2 Omnitrans has developed schematic preferred camera fields of view based on the Agency's operational objectives for a cutaway vehicle. These views are intended to provide comprehensive coverage of customer-driver interactions, customer boarding doors, seating areas, and select exterior views (boarding zone and traffic lanes) at a level of image quality sufficient to accomplish the stated objectives of Omnitrans. Omnitrans recognizes that digital Video Data Recorder (DVDR) port and storage capacity will influence the surveillance coverage available through a given Contractor solution. Additionally, an individual camera may be able to capture multiple views of interest to depending on vehicle geometry, camera placement, and lens selection. Omnitrans will consider the onboard camera coverage of proposed contractor solutions in combination with other functionality of the onboard and central surveillance system components to determine the system that provides the best overall value to Omnitrans. The Contractor shall work within the design process to verify camera placement, lens angle, etc. for each field of view to fulfill the functional intent of the camera system.
- 1.2.3 The OBVSS shall capture dialogue and sounds inside the vehicle. The system must be designed to provide acceptable audio recording functionality given background noise under prevailing operating conditions. Audio recording shall be captured through two (2) microphones provided by the contractor and shall record synchronously with video feeds from selected cameras onboard the vehicle, so that the audio recording is associated with each camera image when downloaded and viewed.
- 1.2.4 The OBVSS shall provide a continuous, secure digital recording of video/audio and onboard surveillance data in support of objectives. Video/audio of interest may be 'tagged' by operator, or as input from a G-Force sensor.
- 1.2.5 Once video is tagged, data is write-protected until it can be downloaded from the vehicle to a central archiving location. Video download from onboard the vehicle will be in one of three ways – via a wireless connection; via download to a laptop connected to the Digital Video Data Recorder (DVDR); or via retrieval of the onboard storage media. Preserving the integrity and privacy of recorded data is of utmost importance to Omnitrans.



- 1.2.6 The Wireless Communication System shall permit data exchange between onboard and central systems without the need to manually pull drives or connect external equipment to the vehicle. When vehicles are within proximity of a signal from the Wireless Communication System, download of tagged surveillance data as well as any system alerts shall be uploaded to the central system. The central Video Management System shall provide for secure video management, viewing, and export functions to support internal and external (e.g., law enforcement) needs. Surveillance data of interest shall be centrally archived in accordance with policy System maintenance; configuration and upgrades shall be managed centrally through the Video Management System by a small number of authorized users.
- 1.2.7 Omnitrans provides “toughbook” laptops (14 Panasonic CF-29 and 2 Panasonic CF-30) to 16 Field Supervisors to monitor field operations and provide back-up Dispatch functions in the event of emergencies. Contractor shall provide hardware and software, as required, enabling Field Supervisors to perform basic wireless proximity video viewing, downloading and tagging functions through the laptop.

## **2 – WARRANTY (SEE 9 - WARRANTY)**

## **3 – TECHNICAL REQUIREMENTS**

See Attachment B, Compliance Matrix

## **4 – ELECTRICAL REQUIREMENTS**

See Attachment B, Compliance Matrix

## **5 DOCUMENTATION REQUIREMENTS**

### **5.1 General Requirements**

- 5.1.1 The Contractor shall provide system documentation comprising of design documentation, testing documentation, training manuals, operation and maintenance documentation, and onboard electrical wiring schematic drawings.
- 5.1.2 The documents shall be complete, accurate, up-to-date, and shall contain only that information that pertains to the system installed.
- 5.1.3 All documentation shall be in English, and shall utilize English measurements.
- 5.1.4 Each volume shall have a binder (stiff cover and spine) and drawings shall be protected by clear plastic to withstand frequent handling. The binding arrangement shall permit the manual to be laid flat when opened.
- 5.1.5 Document paper and binding shall be suitable for frequent handling in a technical reference, training, or shop environment.

- 5.1.6 All pages of the documentation shall carry a title, version number and issue date, and shall contain a complete subject index.
- 5.1.7 Electronic copies of all documentation shall be provided in native and PDF electronic formats on DVD.
- 5.1.8 The Contractor shall include in its schedule a period for review of submissions, and shall include the necessary time and resources to modify the documentation to incorporate comments from Omnitrans.
- 5.1.9 Equipment installation drawings shall be prepared in Visio or AutoCAD, and supplied in native as well as PDF format on DVD as well as hard copies.
- 5.1.10 Electrical and electronic drawings shall be supplied to show engineering changes made to any component or module up to the end of the warranty period of the system supplied.
- 5.1.11 Documentation shall require re-issues if any change or modification is made to the equipment proposed to be supplied. The Contractor may re-issue individual sheets or portions of the documentation that are affected by the change or modification. Each re-issue or revision shall carry the same title as the original, with a change in version number and issue date.
- 5.1.12 The final version of all documentation shall be submitted prior to, and required for, Final System Acceptance.

## **5.2 Design Documentation**

### **5.2.1 Implementation Plan**

- 5.2.1.1 The Contractor shall submit an Implementation Plan documenting their approach and milestones to system installation, integration, testing and acceptance.
- 5.2.1.2 The Implementation Plan shall include the Contractor's proposed list and sequence of activities for the delivery of the full System in accordance to the requirements in these specifications, and their associated milestones for testing and acceptance. As a minimum, the Implementation Plan shall include the sequence and duration of the following activities:
  - 5.2.1.2.1 Engineering and Design;
  - 5.2.1.2.2 Equipment procurement and pre-delivery testing;
  - 5.2.1.2.3 Equipment shipping and site arrival;
  - 5.2.1.2.4 Central systems installation;
  - 5.2.1.2.5 Onboard systems installations;
  - 5.2.1.2.6 Wireless communications system installation;
  - 5.2.1.2.7 Testing and acceptance tasks and milestones; and

5.2.1.2.8 Training.

**5.2.2 System Design Specification**

5.2.2.1 Following detailed engineering and design, the Contractor shall furnish complete written documentation describing the system to be delivered including all equipment and software to be furnished. The System Design Specification (SDS) shall include the following minimum information:

5.2.2.1.1 Overall system schematic and architecture;

5.2.2.1.2 Communications network diagrams (including Wireless Communications System components and wide area network components) showing the physical and logical architecture;

5.2.2.1.3 Major assumptions and risks;

5.2.2.1.4 Detailed description of all subsystems and equipment and hardware, including functional description, interface descriptions, communications loading details, material specifications (i.e. environmental, electrical etc), Material Selection Documentation (MSD), configuration details and installation details;

5.2.2.1.5 Details on all network, data, power/electrical or other requirements provided by a third party;

5.2.2.1.6 Detailed description of all software, including functional description, system interface descriptions, GUI descriptions, hardware specifications, availability and reliability figures and configuration details;

5.2.2.1.7 Detailed descriptions of information, materials and timing required by the Contractor by other parties;

5.2.2.1.8 Wiring and installation diagrams for garage/yard equipment for each facility;

5.2.2.1.9 Sub-system Integration Plan; and

5.2.2.1.10 Parts list for each piece of equipment supplied. The parts list shall identify the manufacturer(s) and model/part numbers of all equipment. The Contractor may use manufacturer's data sheets or handbooks for individual equipment items that are a subcomponent within the overall system.

**5.2.3 Material Selection Documentation**

5.2.3.1 For custom-manufactured equipment, the Contractor shall submit a set of comprehensive shop drawings and specifications as part of the

MSD. The comprehensive shop drawings shall include the general arrangement, layout, wiring details, mounting bolt requirements, location for conduit entry and any physical or electrical requirements.

- 5.2.3.2 For standard off-the-shelf items, the Contractor shall submit detailed manufacturer product specifications, drawings on mounting requirement, location of conduit entry and any other physical or electrical requirements.
- 5.2.3.3 The Contractor shall provide certification and compliance statements for all standards that apply to the manufacturing of the equipment, whether custom-manufactured or off-the-shelf.

#### **5.2.4 As-Built Documentation**

- 5.2.4.1 The Contractor shall provide sufficient documentation to reflect "as supplied" conditions and to facilitate operation, maintenance, modification and expansion of the equipment or any of its individual components to the satisfaction of OMNITRANS or its representative.
- 5.2.4.2 The SDS shall be updated to include the as-built conditions.
- 5.2.4.3 The as-built documentation shall be provided three (3) weeks after Conditional Acceptance has been granted, and updated documentation will be required at any time the Contractor provides software or hardware upgrades.

#### **5.2.5 Testing Documentation**

- 5.2.5.1 The Contractor shall submit a detailed Acceptance Plan that outlines each type of test, and the testing schedule.
- 5.2.5.2 The Acceptance Plan shall be submitted at the same time as the SDS documentation.
- 5.2.5.3 The Acceptance Plan shall include test descriptions, procedures and expected results for the following tests:
  - 5.2.5.4 Vehicle Acceptance Test;
  - 5.2.5.5 Proof of Performance Test (POP);
  - 5.2.5.6 Hot Run Test; and
  - 5.2.5.7 Operability Period Test (OPT).

5.2.6 The Acceptance Plan shall include a requirements traceability matrix that will cross-reference the SDS, test procedures and original Technical Specifications.

5.2.7 The Acceptance Plan shall satisfy that quality documentation will be generated from each component of the acceptance plan.

**5.2.8 Training Manuals**

5.2.8.1 Training manuals shall be provided for each training participant (see Section 9: Training), in addition one (1) complete, reproducible and unbound version of each manual shall be provided.

5.2.8.2 The manuals shall provide information on all of the topics covered during each of the training sessions and include exercises and screen captures.

5.2.8.3 The Training Manual shall include space for the users to take notes during the training sessions.

**5.2.9 Operation and Maintenance Documentation**

5.2.9.1 The operation and maintenance documentation will be comprised of the Operation and Maintenance (O&M) Manuals, User Manuals and System Administration Manuals.

5.2.9.2 The O&M documentation shall be submitted to or its representative prior to OPT testing.

5.2.9.3 The Contractor shall deliver complete sets of O&M Manuals as defined in the Pricing Schedules; (1) complete, reproducible and unbound version of each manual shall also be provided.

5.2.9.4 O&M (Maintenance Technician Manual)

5.2.9.5 The O&M Manuals shall be a detailed presentation of all on-board systems and shall include illustrations where applicable. For each onboard unit, it shall include, but shall not be limited to:

5.2.9.5.1 General description

5.2.9.5.2 Functional description;

5.2.9.5.3 Functional block diagram;

5.2.9.5.4 Operating instructions

5.2.9.5.5 Maintenance and repair procedures;

5.2.9.5.6 Test procedures;

5.2.9.5.7 Schematic drawings and circuit diagrams; and

5.2.9.5.8 Parts list.

5.2.9.6 Each type of maintenance manual shall contain but not be limited to:

- 5.2.9.6.1 Description of operation including start-up and emergency procedures;
  - 5.2.9.6.2 Installation procedures;
  - 5.2.9.6.3 Complete parts identification diagram and list;
  - 5.2.9.6.4 Troubleshooting procedures;
  - 5.2.9.6.5 Inspection procedures;
  - 5.2.9.6.6 Preventive maintenance procedures and program;
  - 5.2.9.6.7 Repair procedures;
  - 5.2.9.6.8 Diagnostic procedures;
  - 5.2.9.6.9 Wiring diagrams;
  - 5.2.9.6.10 Electrical schematics with board and cable identification;
  - 5.2.9.6.11 Adjustment procedures;
  - 5.2.9.6.12 Season maintenance requirements;
  - 5.2.9.6.13 Equipment arrangement and drawings;
  - 5.2.9.6.14 Names and schedules of all lubricants and cleaners used; and
  - 5.2.9.6.15 Other consumable materials for the equipment stating where used, quantity, service intervals and annual consumption.
- 5.2.9.7 The Contractor shall provide a parts list for all equipment supplied. The parts list shall identify the manufacture(s) and model/part number.
- 5.2.9.8 The Contractor may use manufacturer's data and handbooks for individual items of the equipment that are a sub-component of the overall system. All such documentation shall be contained in similar binders.
- 5.2.9.9 Where an equipment component is of such a nature that local repairs cannot be made and it must be returned to the factory as a unit for overhaul, specific information concerning its repair and breakdown into component parts shall be provided.

**5.2.10 Users (Video System Operator Manual)**

- 5.2.10.1 A User Manual shall be provided for each software application.
- 5.2.10.2 The User Manual shall include screen captures and easy to follow instructions to assist the users through all of the tasks that they may need to complete.
- 5.2.10.3 The User Manual shall include an index.
- 5.2.10.4 Fault procedures shall be described, as well as procedures for dealing with problems.

#### **5.2.11 Administration (System Administrator Manual)**

- 5.2.11.1 A System Administrator Manual shall be provided for each software application.
- 5.2.11.2 The System Administration Manual shall outline all of the installation procedures, configuration parameters, details on how to configure the parameters, back-up and recovery process, trouble shooting techniques and technical support information.
- 5.2.11.3 Fault procedures shall be described, as well as procedures for dealing with problems.

### **6 IMPLEMENTATION**

#### **6.1 Implementation Services**

- 6.1.1 The Contractor shall perform implementation services related to the engineering, design, and installation of the system, as described in this section.

#### **6.2 Engineering and Design**

##### **6.2.1 Surveys and Inspections**

- 6.2.1.1 The Contractor shall conduct surveys as necessary to ensure that the requirements and conditions of the System are fully understood prior to implementation; as a minimum the following surveys shall be conducted as defined below:
  - 6.2.1.1.1 Requirements survey;
  - 6.2.1.1.2 Wireless coverage surveys
  - 6.2.1.1.3 Site surveys; and
  - 6.2.1.1.4 Interface survey.
- 6.2.1.2 The requirements survey shall confirm any outstanding or undefined issues of technical, functional or performance requirements as well as quantities of equipment.
- 6.2.1.3 Wireless coverage surveys shall confirm the number and type of access points required, and the resulting operational signal thresholds throughout the transit center yard.
- 6.2.1.4 Site surveys shall assess and confirm all aspects relating to facility design and construction including, for example:
  - 6.2.1.4.1 Equipment space and installation requirements at transit sites
  - 6.2.1.4.2 Physical access for installation, configuration, and maintenance

- 6.2.1.4.3 Power sources
- 6.2.1.4.4 All System interface points with other systems and facilities shall be surveyed to ensure that a fully operational interface can be designed and implemented.
- 6.2.1.4.5 The Contractor shall document all surveys with concise but complete records that shall be subject to inspection and, upon request, delivery to Omnitrans.

## **6.2.2 Engineering**

- 6.2.2.1 The Contractor shall provide all design and engineering services necessary to design and construct a complete and fully operational System in accordance with these Technical Specifications.
- 6.2.2.2 The System design work shall include cost optimization to ensure the camera quantity and quality, disk storage, wireless throughput, and central system configuration, and other trade-offs have resulted in a least cost configuration over the life of the system that conforms with all functional and performance specifications.
- 6.2.2.3 During system design review, reserves the right to query all design assumptions and trade-offs and request reviews be undertaken to improve optimization or cost effectiveness of the design.

## **6.2.3 Design Process**

- 6.2.3.1 The Contractor shall undertake and document all design processes and design elements necessary to implement the complete System.
- 6.2.3.2 The design elements will include, as a minimum:
  - 6.2.3.2.1 Requirements and Configuration Confirmation
  - 6.2.3.2.2 Onboard Architecture
  - 6.2.3.2.3 Onboard Installation
  - 6.2.3.2.4 Onboard Interfaces
  - 6.2.3.2.5 Wireless Communications System
  - 6.2.3.2.6 Central System Design
  - 6.2.3.2.7 Network Interfaces
  - 6.2.3.2.8 Acceptance Plan
  - 6.2.3.2.9 Implementation Plan; and
  - 6.2.3.2.10 Draft versions of manuals
- 6.2.3.3 The Contractor shall document each of these elements in sufficient detail to allow an audit of all design assumptions and design details to determine conformance and compliance with the Contract and the Technical Specifications.



- 6.2.3.4 Omnitrans will review the completed SDS and will indicate to the Contractor in a Design Review Report any and all changes or additions to the SDS that are required to achieve System Design Acceptance.
- 6.2.3.5 The Contractor shall facilitate Design Review meetings as necessary to present the System Design Specification and to explain design elements and the consequences of design changes.
- 6.2.3.6 The Contractor shall revise the SDS to reflect the changes directed in the Design Review Report and re-submit the SDS.
- 6.2.3.7 Upon review and acceptance of the revised SDS, will issue a Notice of System Design Acceptance. The revised SDS will be referred to as the Accepted Design.
- 6.2.3.8 Review and acceptance of the SDS shall be for the system design's general conformance to the Contract and requirements only and shall not be construed as a technical audit to determine the feasibility of the design or the System to meet the specifications.
- 6.2.3.9 Any changes to the design subsequent to issuance of the Notice of System Design Acceptance shall follow the Change Order Process.
- 6.2.3.10 From time to time during the course of the execution of the contract, Omnitrans or the Contractor may initiate a change process. Such changes to the scope of work will not be approved without using a formal change notice process. Minor changes may be accumulated into a single change notice.
- 6.2.3.11 The Contractor may initiate a design change process by issuing a Change Notice to Omnitrans. The Change Notice must provide a detailed description of the requested change, the reasons for the requested change, the impact of the change on the Project Cost using unit costs as defined in the Contract, the impact on the project schedule, the resultant changes to compliance to any of the Technical Specifications, and the requirements of to support the change.
- 6.2.3.12 Omnitrans will review and either approve or reject all such change requests in a timely manner. On approval of any such Change Notice, Omnitrans will issue a Change Order.
- 6.2.3.13 Omnitrans may initiate a design change process by issuing a Change Notice, detailing the changes required.
- 6.2.3.14 The Contractor must respond in a timely manner with a Change Impact statement, indicating work, materials and change to the Accepted Design to implement the requested change, the impact of the change on the Project Cost using unit costs as defined in the Contract, the impact on the project schedule, the resultant changes to compliance to any of the Technical Specifications, and the requirements of to support the change.

- 6.2.3.15 Based upon the Change Impact statement Omnitrans will either approve or retract its change request. On approval of any such Change Notice and Change Impact statement, Omnitrans will issue a Change Order.

#### **6.2.4 Installation**

- 6.2.4.1 The Contractor proposed Implementation Plan will be finalized upon receipt of Notice of System Design Acceptance.
- 6.2.4.2 The Contractor shall provide sufficient resources and installation crews to complete installation in one (1) week following Proof of Performance Acceptance.
- 6.2.4.3 All installation activities shall adhere to the applicable physical and materials, electrical and environmental requirements detailed in the previous sections.
- 6.2.4.4 Omnitrans will make arrangements to accommodate the Contractor for work on-site. Visits for system support may be arranged with Omnitrans.
- 6.2.4.5 Central system VPN access can be arranged by Information Services subject to addressing security considerations.
- 6.2.4.6 Constructed works and installations shall be subject at any time to inspection by or its representatives. The Contractor shall:
- 6.2.4.7 Cooperate with and provide access to the inspector;
- 6.2.4.8 If requested, provide personnel to assist the inspector;
- 6.2.4.9 Give timely notice of work designated for inspection; and
- 6.2.4.10 If requested, uncover any work designated for inspection that was not inspected, and then recover after inspection at no cost to Omnitrans.
- 6.2.4.11 Following installation and testing of individual system components, the Contractor shall integrate all hardware and software components into a fully functional system. The Contractor is expected to apply structured processes for various integration activities including troubleshooting and fault diagnosis, system configuration, and initialization of operations
- 6.2.4.12 Technical staff may perform installation of equipment and software under the Contractor's supervision as necessary. The Contractor's installation requirements must include, at a minimum, documentation for and training on the system requirements, installation procedures and maintenance procedures including, but not limited to, hands-on instruction with written step-by-step setup instructions. The Contractor shall provide personnel contacts for installation support for all software and hardware. All software specifications will be detailed in the provided documentation.

6.2.4.13 Installation schedule will be arranged between Omnitrans and Contractor.

### **6.3 SHIPMENT AND DELIVERY**

#### **6.3.1 Delivery and Storage of Materials**

6.3.1.1 The Contractor shall be responsible for coordinating, unloading, inspecting, accepting and storing all material deliveries. Personnel shall be excluded from performing any of these activities.

6.3.1.2 All claims necessary as a result of damage or loss during shipment shall be the responsibility of the Contractor.

6.3.1.3 All stored materials shall remain the responsibility of the Contractor until accepted by Omnitrans.

6.3.1.4 The Contractor's Project Manager or Contractor's Technical Representative shall be the only individuals authorized to accept materials delivered to Omnitrans. The Contractor shall present to the Project Manager a receipt of items being delivered. The Project Manager's signature on the receipt shall constitute acceptance of the materials.

6.3.1.5 Contractors shall list in their response the facilities where they plan to deliver the major system items prior to installation.

#### **6.3.2 Shipment Authorization**

6.3.2.1 Each System element shipped from the Contractor's facility to Omnitrans shall be complete, ready to be installed, and in compliance with all provisions of the specification. Prior to shipment of each element, the Contractor shall obtain a shipping release signed by Project Manager or his or her designee. The shipping release shall certify that the element is complete, has passed all factory functional and performance tests described in these requirements and complies with approved Contractor's drawings, samples and other agreed upon conditions for shipping. The Project Manager, at his or her sole discretion, may permit shipment of a System element with minor defects that will not affect testing and can easily be corrected after shipment. All known defects shall be submitted by the Contractor with the request for shipping release. The shipping release shall not be construed nor inferred to constitute to any degree System acceptance by Omnitrans.

#### **6.3.3 Shipment**

6.3.3.1 The Contractor shall arrange for shipment of System elements to be controlled so as to prevent damage to the System elements. All subsystems shall be protected from damage during shipment.

**6.3.4 Shipping Destination**

6.3.4.1 All System elements shall be shipped to facilities as coordinated by Project Manager, prior to installation.

6.3.4.2 The Contractor shall be responsible for all work and all costs attendant to the placing of System elements in a ready-for-use condition at East Valley and West Valley.

**6.3.5 Transfer of Title and Risk of Loss**

6.3.5.1 Title to each System element shall pass to upon Conditional Acceptance and the Contractor shall furnish or execute all necessary documentation of title at that time. Passage of title shall not constitute acceptance of the System nor relieve the Contractor of any of its obligations under the Contract, nor preclude rejection of the System by Omnitrans.

**6.3.6 Delivery of Spare Parts, Special Tools and Test Equipment, and Manuals**

6.3.6.1 The Contractor shall notify Project Manager at least ten (10) days in advance of delivery of all spare parts, special tools and test equipment, and manuals. All such materials shall be delivered as coordinated with Project Manager prior to shipping. Shipping documents shall accompany delivery of all materials. The shipping documents shall identify all spare parts by part number, serial number.

6.3.6.2 Omnitrans will inspect all materials to confirm the accuracy of the shipping documents and to check for damage, etc. to the materials. Will then issue a delivery receipt if the documentation and materials are in order, and no materials will be considered delivered or eligible for payment until delivery receipts have been issued by Omnitrans.

**6.4 USE OF FACILITIES**

**6.4.1 Work Space**

6.4.1.1 For the Contractor's preparation and testing of the System for delivery, Omnitrans shall make available one (1) system work position including, to the extent reasonable as determined in the sole discretion of Omnitrans, electric power, storage for System components, and use of employee facilities.

6.4.1.2 The Contractor shall furnish all personnel, supplies, and tools for System pre-delivery work at facilities, and shall furnish all equipment and other requirements for the System pre-delivery work position not made available to the Contractor from Omnitrans.

**6.4.2 Care of Premises**

6.4.2.1 The Contractor shall maintain its premises on property in a reasonably neat and orderly condition. Upon completion of the entire project, the Contractor shall remove all temporary buildings, structures, fences, scaffolding, surplus

materials, and rubbish of every kind from the site of the Contractor's work on property.

#### 6.4.3 Discipline and Order

6.4.3.1 The Contractor shall enforce strict discipline and good order among its employees at all times and shall not employ on the work any unfit person or anyone not skilled in the task assigned to him or her. Any person employed on the project by the Contractor or any of its Sub-Contractors who, in the opinion of, does not perform his or her work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of Omnitrans, be removed forthwith by his or her employer, and shall not again be employed on this project without the prior approval of Omnitrans.

#### 6.4.4 Security

6.4.4.1 The Contractor shall comply with all Safety & Security policies of Omnitrans. Any person employed on the project by the Contractor or any of its Sub-Contractors who, in the opinion of Omnitrans, does not comply, shall at the written request of Omnitrans, be removed forthwith by his or her employer and shall not again be employed on this project without the prior approval of Omnitrans.

#### 6.4.5 Noise Control

6.4.5.1 The Contractor shall comply with all applicable federal, state, and local laws, ordinances and regulations regarding noise control. All equipment shall comply with pertinent equipment noise OMNITRANS standards of the United States Environmental Protection Agency (USEPA).

#### 6.4.6 Integrated Testing

6.4.6.1 The Contractor shall work cooperatively with, and with other systems Contractors to perform integrated testing of the System as coordinated Project Manager.

#### 6.4.7 Cooperation

6.4.7.1 The Contractor shall cooperate with in scheduling and coordinating the Contractor's work on property with the work and operations schedule. Omnitrans staff shall make every effort to accommodate the Contractor's testing activities. However, the Contractor agrees that operations activities shall have a priority over Contractor activities. Activities may necessitate cessation of Contractor activities.

#### 6.4.8 Hours of Work

6.4.8.1 Work on property and at facilities shall not disrupt normal operations and the transport of passengers. This includes maintenance, cleaning, and other off-hours activities.

- 6.4.8.2 Demolition, facility installation and testing activities may be performed during normal work hours, provided those activities are non-disruptive. Hours of work for these activities shall be discussed in the Contractors Installation Plan and subject to written approval by Omnitrans.
- 6.4.8.3 Omnitrans will make vehicles available for on-site installation of Contractor's equipment into Omnitrans vehicles only during non-peak vehicle hours of 6:00 p.m. – 4:00 a.m. daily at each Omnitrans facility.

## **7 TESTING AND ACCEPTANCE**

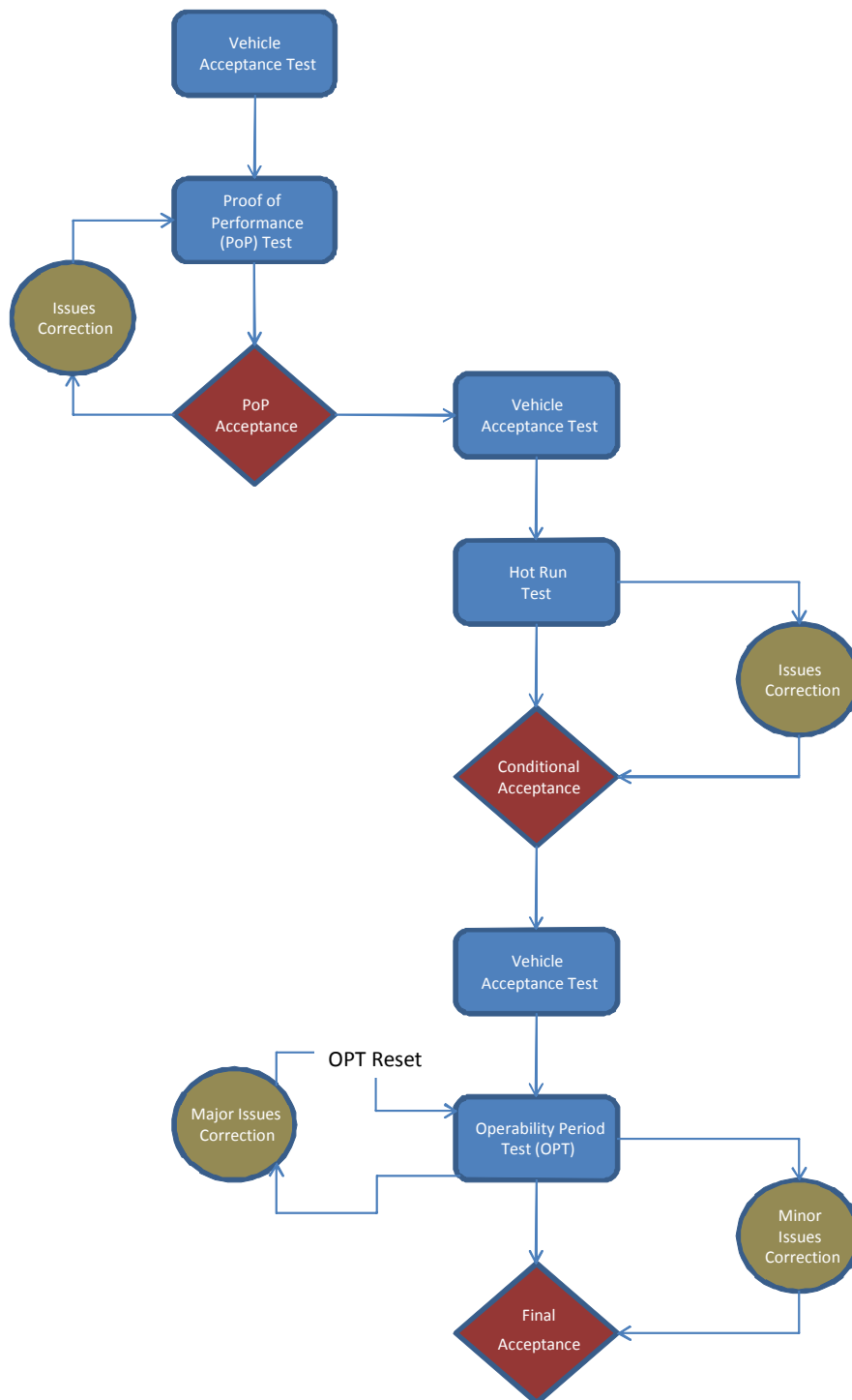
### **7.1 GENERAL REQUIREMENTS**

- 7.1.1 A four (4) step testing and acceptance model shall be used, with each step comprising a milestone in which will authorize the Contractor to proceed to the next milestone. Exhibit 6 provides an overview of the testing approach; the key attributes of this testing approach include:
  - 7.1.1.1 Vehicle Acceptance Test (VAT) required for each vehicle installation
  - 7.1.1.2 POP Test leading to POP Acceptance
  - 7.1.1.3 Hot Run Test (HRT) leading to Conditional Acceptance
  - 7.1.1.4 OPT leading to Final System Acceptance
- 7.1.2 Omnitrans will not be constrained by the Contractor Testing Plan and reserves the right to make the following requests which shall be acted on by the Contractor:
  - 7.1.2.1 Any procedural changes and other reasonable tests to reasonably assure System performance and conformance
  - 7.1.2.2 Investigation into any apparent troubles or anomalies with respect to the System
  - 7.1.2.3 An audit of all test reports and verification of any or all previous tests and measurements.
- 7.1.3 Upon successful completion of any test, the Contractor shall prepare and submit within two (2) weeks a report summarizing the results with relevant test records appended. All such test reports must be signed by witnesses to the tests.
- 7.1.4 Omnitrans shall be notified five (5) days in advance of each test. Reserves the right to witness any or all of the tests.
- 7.1.5 The Contractor shall conduct its own tests in advance of tests required by the Contract as necessary to ensure compliance with the Technical Specifications at the time of the Contract required tests and to rehearse test procedures.
- 7.1.6 All equipment and components must be delivered with the manufacturer's quality conformance test sheets proving the equipment met the manufacturer's quality criteria.

## **7.2 VEHICLE ACCEPTANCE TESTING (VAT)**

- 7.2.1 Vehicle Acceptance testing shall be carried out for the testing and acceptance of the onboard system installed on each vehicle.
- 7.2.2 The complete onboard system shall be tested on each vehicle for its compliance with all technical, functional, environmental, installation, and ergonomic requirements and specifications of the system.
- 7.2.3 Vehicle Acceptance Tests will need to be completed prior to the commencement of the POP test, HRT, and OPT for their associated vehicle quantities.
- 7.2.4 The Contractor shall be required to install (as a minimum in temporary state) essential components of the central system and wireless communication system infrastructure to support the VAT procedures.

## Exhibit 6: Testing Approach





### **7.3 PROOF OF PERFORMANCE (POP) TESTING**

- 7.3.1 POP testing shall commence upon the installation of the central system, Wireless Communications System, and on one representative coach of each type and configuration that will be part of the Phase deployment.
- 7.3.2 All system functions shall be tested in the POP. All components, subsystems, and system processes shall be tested individually and together to ensure that they meet the contract requirements and provide a properly functioning system.
- 7.3.3 Upon acceptance of the POP test results Omnitrans will grant POP Acceptance and authorize the Contractor to proceed with additional on-board installations for the HRT.

### **7.4 HOT RUN TESTING (HRT)**

- 7.4.1 HRT shall be carried out over a larger subset of test vehicles to provide an end-to-end test of the onboard, central, and Wireless Communications Systems.
- 7.4.2 The HRT shall test all functional and performance parameters specified in the Technical Specifications.
- 7.4.3 The HRT shall be carried out over a one (1) week period using in-service vehicles.
- 7.4.4 A total of seventeen (10 in-service vehicles will be used in the Hot Run Test.
- 7.4.5 The Contractor shall complete the onboard equipment installation on three (3) test vehicles for the HRT after POP Acceptance has been granted; and, after the VAT have been carried out for all test vehicles.
- 7.4.6 Omnitrans will undertake the HRT result documentation by maintaining a daily log of non-compliances and issues. The daily logs will be submitted to the Contractors for rectification.
- 7.4.7 The Contractor shall be required to complete all necessary system adjustments, corrections, and modifications to address non-compliances documented during the HRT. The HRT shall be extended until Conditional Acceptance is granted.
- 7.4.8 Conditional Acceptance will be granted upon the successful completion of the HRT, and completion of associated necessary corrections.
- 7.4.9 Installation of System equipment in the remaining vehicles associated with a particular Phase will commence after Conditional Acceptance has been granted.

### **7.5 OPERABILITY PERIOD TEST (OPT)**

- 7.5.1 The OPT is a two (2) week performance test that is initiated once Vehicle Acceptance has been granted for all remaining vehicles. Through the OPT, the system is tested under full operational conditions to ensure that the

performance requirements are met and to measure the system performance under full load conditions, reliability and availability.

- 7.5.2 During the OPT period, Omnitrans will operate the system as per normal operations and document system deficiencies and non-compliances as follows:
- 7.5.3 Major Issues: "Major Issues" shall constitute:
  - 7.5.3.1 System deficiencies that impair any system aspect of more than ten percent (10%) of the fleet.
  - 7.5.3.2 System deficiencies that impair the central system's capacity to manage and/or access data captured by the system, and require hardware replacement and/or software modifications.
  - 7.5.3.3 Total failure of the Wireless Communications System.
  - 7.5.3.4 System deficiencies that take more than 24 hours to rectify.
- 7.5.4 Minor Issues: "Minor Issues" shall constitute defects and deficiencies that can be corrected in less than twenty-four (24) hours.
- 7.5.5 Minor Issues will be documented and communicated to the Contractor for rectification. Upon resolution of the issue, further testing will be carried out to document its resolution.
- 7.5.6 Major Issues will be documented and communicated to the Contractor for rectification. Major Issues will trigger a reset of the OPT period which will recommence for a two (2) week period upon resolution of the issue. Further testing will be carried out to document resolution prior to the resetting of the OPT.
- 7.5.7 The OPT will be completed when the full two (2) week period of the test is carried out without any Major Issues.
- 7.5.8 Upon completion of the OPT, resolution of all Minor Issues, submission of all Phase related documentation, and completion of all Phase related training, will grant Final System Acceptance to the Contractor.

## **8 TRAINING**

### **8.1 TRAINING SERVICES**

- 8.1.1 The Contractor shall be responsible to train designated personnel according to the requirements specified herein.
- 8.1.2 Training shall take place at designated facilities.
- 8.1.3 Training programs shall incorporate "Train the Trainer" instruction to enable to internally address future system training needs.
- 8.1.4 Practical training on equipment or software shall occupy a significant portion of all training classes.
- 8.1.5 The training presentations and material shall be in English.

- 8.1.6 Instruction shall cover equipment familiarization and systems operation. The minimum training is that which is necessary to bring those employees designated to the level of proficiency required for performing their respective duties.
- 8.1.7 The Contractor shall provide experienced and qualified instructors to conduct all training sessions. The Contractor is responsible for ensuring that the instructors teaching these courses are not only familiar with technical information but are able to utilize proper methods of instruction, training aids, audiovisuals and other materials to provide for effective training.
- 8.1.8 The Contractor is responsible for providing all training materials, training aids, audiovisual equipment and visual aids for the conduct of these courses.
- 8.1.9 Instructional materials consisting of applicable equipment operation and maintenance manuals, and supplemental notebooks consisting of additional drawings, procedures, and descriptive information shall be provided. Materials shall be suited to the level of technical familiarity and operating environment of the training audience.
- 8.1.10 Student guides shall include full topic descriptions, illustrations as needed to enhance content presentation, and common problems with comprehensive solutions given. Student guides shall mirror the instructor guides.
- 8.1.11 All training materials are to become the property of Omnitrans at the conclusion of training.
- 8.1.12 Maintenance training shall commence during the time when equipment is installed on the vehicles and shall include hands-on orientation of maintenance technicians during the installation and testing phases.
- 8.1.13 The Contractor shall submit the training curricula, presentations, and materials for review and approval by. No training shall commence until these items have been approved by Omnitrans.
- 8.1.14 Training curricula shall meet all training requirements and indicate course content, training time requirements, and who should attend.
- 8.1.15 Training curricula shall be provided to for review a minimum fifteen (15) days prior to commencement of equipment installation.
- 8.1.16 Level of competency required to pass course examinations shall be determined by Omnitrans.
- 8.1.17 The following summarizes the minimum on-site training that shall be provided:
  - 8.1.17.1 End User Training – one (1) four (4) hour day of training for two (2) users;
  - 8.1.17.2 Maintenance Technicians – one (1) four (4) hour days of training for two (2) users;
  - 8.1.17.3 System Administrators – one (1) four (4) hour hour days of training for two (2) users.

8.1.18 The Contractor shall as part of its proposal include two (2) four (4) hour days of on-site training to meet additional training needs of End Users, Maintenance Technicians, and/or System Administrators during system implementation and/or within one (1) year following Final Acceptance.

8.1.19 At the request of Omnitrans, the Contractor shall provide additional training sessions at the contract rate schedule price per training hour.

## **9 WARRANTY**

### **9.1 GENERAL WARRANTY REQUIREMENTS**

- 9.1.1 The Contractor shall provide a single point of contact for all warranty administration during the warranty period.
- 9.1.2 The Contractor shall warrant that it has reviewed and evaluated all information furnished by Omnitrans and has made all inquiries necessary such that the Contractor is fully aware of business requirements and intended uses of system, as set forth or referenced in the Request for Proposals and any Addenda, Requests for Best and Final Offers, as well as in discussions during the Pre-proposal Conference.
- 9.1.3 The Contractor shall warrant that, it has good title to the system and its components and the right to sell to, free of any proprietary rights of any manufacturer (if the Contractor is not the manufacturer) or other party, and free of any lien or encumbrance, except for proprietary rights of third parties relating to any third party software incorporated by Contractor into the products.
- 9.1.4 The Contractor shall warrant that all installation work and all system hardware furnished by the Contractor including but not limited to all such work and system hardware provided by the Contractor or other suppliers or manufacturers, shall be of good quality and free of any defects or faulty materials and workmanship for the warranty period.
- 9.1.5 The Contractor shall warrant that the design , construction, all installation work and system hardware and software shall perform according to the Technical Specifications
- 9.1.6 It is recognized that the original manufacturers' or suppliers' warranties may expire before the end of the Warranty Period. The Contractor shall therefore provide extended warranties for all such products or equipment (software, hardware, spare parts) and shall assume full responsibility for replacement or repair for the duration of the Warranty Period, the full cost of which shall included in the Contract Price.
- 9.1.7 All warranties and guarantees of Contractor, manufacturers and suppliers with respect to any such work and system hardware shall be obtained by the Contractor for the benefit of Omnitrans regardless of whether or not such warranties and guarantees have been assigned or transferred to by separate agreement. The Contractor shall fully enforce such warranties and guarantees on behalf of Omnitrans.

- 9.1.8 Omnitrans will operate the system hardware and software in accordance with the Contractor's specific instructions in order to maintain all warranties. However, the Contractor shall hold harmless and the Contractor shall be responsible for repairing any damage from ' improper operation of any system hardware or software resulting from Contractor's failure to provide adequate or correct training and/or complete operating manuals, software manuals, electrical drawings, complete computer program documentation, and other documents required to be furnished as identified within these specifications.
- 9.1.9 The Contractor shall warrant that the documentation provided shall completely and accurately reflect the operation and maintenance of the equipment and software, and provide with all information necessary to maintain the system. All necessary documentation, training materials, or drawings resulting from changes or modifications to the System as a result of Warranty service shall be provided to Omnitrans at no additional cost.
- 9.1.10 If there is a change in the production configuration of any equipment or software being installed prior to System Acceptance, Omnitrans requires that all previously installed equipment and software be upgraded to match the updated configuration.

## **9.2 WARRANTY PERIOD**

- 9.2.1 The Warranty Period shall be for a period of Twenty-four (24) months following Final Acceptance.
- 9.2.2 Any extended warranties on specific system components that apply beyond this period shall be transferred to Omnitrans.

## **9.3 WARRANTY OBLIGATIONS**

### **9.3.1 Spare Parts**

- 9.3.1.1 At request, the Contractor shall provide a list of spare parts (Spare Parts List) to be provided under the Contract. Quantities of spare parts shall be at least 10% of the installed quantity of replacement parts, components, consumables or sub-assemblies, or an additional amount to meet the estimated need for warranty and maintenance purposes for a period of two (2) years.
- 9.3.1.2 The Spare Parts inventory shall include:
- 9.3.1.2.1 Cameras
  - 9.3.1.2.2 Microphones
  - 9.3.1.2.3 Digital Video Recorders
  - 9.3.1.2.4 Compact Flash
  - 9.3.1.2.5 Optional Equipment
  - 9.3.1.2.6 Wireless equipment

9.3.1.2.7 Other consumables or supplies required to support maintenance by Omnitrans staff.

9.3.1.3 The contractor shall provide any specialized tools and equipment necessary to install, calibrate, test and maintain the system. All wiring, cabling and adapters shall also be provided.

9.3.1.4 The Contractor shall provide spare parts in accordance with the agreed Spare Parts List, the full cost of which shall be included in the Contract Price.

9.3.1.5 The Spare Parts shall be placed into the spare parts inventory and become the property of Omnitrans upon system handover.

#### 9.3.2 Hardware Warranty

9.3.2.1 During the Warranty Period, defective hardware shall be replaced by the Contractor using stock from the spare parts inventory to reduce downtime. Components not from Stock replaced in the last year of warranty shall carry an additional one year warranty.

9.3.2.2 For each defective part, the Contractor shall provide repaired or new replacement unit to replenish the spare parts inventory. The replacement units shall be fully tested and certified compliant with the original part. If the Contractor determines that a returned component is not faulty, Omnitrans shall receive the original component back in working order within two days of the Contractor originally receiving the returned component.

9.3.2.3 The replacement spares shall be received by within a guaranteed turnaround not exceeding ten (10) business days from receipt of the faulty unit by the Contractor to shipment of the replacement spare unit.

9.3.2.4 The cost of all transportation and insurance charges for shipping defective and replacement parts shall be borne by the Contractor.

#### 9.3.3 Software Warranty

9.3.3.1 The Contractor shall develop, test, provide and install all applicable software “patches” or updates that become necessary to remedy software faults or “bugs” identified during the Warranty Period, in accordance with the Maintenance Plan and other terms set forth in the Contract.

9.3.3.2 During the Warranty Period, the Contractor shall provide at no additional cost to all version updates, software patches and error corrections available for the software provided under this Contract in accordance with the Maintenance Plan and other terms set forth in the Contract.

### 9.4 SUPPORT

9.4.3 The Contractor shall arrange for support from one or more qualified firms to be available with a four-hour response time, on a 24/7 basis, when needed by Omnitrans to assist with fault diagnosis or component replacement.

9.4.3.1 The proposal shall include a list of the support firms, their support responsibilities and the response arrangements.

9.4.3.2 If a support firm does not respond within the agreed response timeframe, or when a support firm is not able to provide the needed support, the Contractor shall provide supplementary support in accordance with an agreed escalation procedure. The escalation procedure can initially involve telephone support, but must culminate in the Contractor providing on-site support if needed. The proposal must define the proposed support escalation procedure.

#### 9.4.4 System-wide Replacement

9.4.4.1 If at least 25% of a given component requires repair or replacement within the three -year warranty period, the component shall be deemed to warrant system-wide replacement.

9.4.4.2 System-wide replacement shall require the Contractor to replace all units of the suspect component throughout the system, whether or not they have exhibited any fault.

9.4.4.3 If the system-wide replacement activity extends beyond the end of the three-year warranty period, the Contractor shall be obligated to complete it if the need was documented before the end of the warranty period.

#### 9.4.5 Enforcement of Warranty

9.4.5.1 If the Contractor fails to perform any of the warranty repairs required within the times set forth in this section, Omnitrans may at its option, correct any malfunction giving rise to the need for the warranty repair. If makes such repairs, Contractor shall pay to within thirty days of request for payment, all cost associated with the repair, including but not limited to Omnitrans staff time, equipment, and any attorney's fees for collection of the cost of the warranty repair.

## 10 SYSTEM MAINTENANCE SERVICES

### 10.1 GENERAL REQUIREMENTS

10.1.1 Contractor shall provide maintenance services during the warranty period.

10.1.2 Maintenance services shall be provided through a single company; this shall entail coordinating the repair of equipment with original manufacturers.

10.1.3 If the Contractor shall not be the maintenance service provider, the Operations and Maintenance Plan shall identify which local company within the Greater San Bernardino area shall be providing the maintenance services. The Contractor shall not be permitted to change the maintenance service provider without written authorization from Omnitrans. Omnitrans reserves the right to require changes to the maintenance service provider if the obligations under the maintenance agreement are not met.

- 10.1.4 Maintenance issues shall be resolved in a timely manner, as agreed to within the executed maintenance agreement between the Contractor and Omnitrans.
- 10.1.5 Maintenance of equipment, software, communications, or other components requiring access to enterprise networks or systems shall be approved by and coordinated with Omnitrans Information Technology Department. Omnitrans shall perform central system maintenance activities on behalf of the Contractor with the Contractor's guidance and oversight. At no time shall the Contractor maintain, reconfigure, modify, or access in any way the enterprise IT network without expressed prior consent of the Project Manager or designee.
- 10.1.6 Any necessary documentation, training materials, or drawings resulting from changes or modifications to the System as a result of system maintenance services shall be provided to Omnitrans at no additional cost.

## **10.2 MAINTENANCE SERVICES**

### **10.2.1 Minimum Services Required**

- 10.2.1.1 The Contractor shall provide a problem notification system for the receipt of maintenance service requests. As a minimum, the problem notification system shall be a contact telephone number, providing a single point of contact and accessible Monday to Friday between the hours 9:00AM and 5:00PM (Pacific Standard Time).
- 10.2.1.2 The Contractor shall acknowledge the receipt of a maintenance service request within four (4) hours of the current and next business day, indicating that a response has been initiated.
- 10.2.1.3 The total response period, commencing with the Contractor acknowledgement that a service request has been received and terminating with the completion of the maintenance service requirements, shall not exceed forty-eight (48) hours.
- 10.2.1.4 During the response period, the Contractor shall provide both remote and/or on-site diagnostics and support, as required by the nature of the request, and deemed necessary to meet the response period requirement.

### **10.2.2 Equipment Maintenance**

- 10.2.2.1 All Onboard, central, and wireless communication system equipment shall be maintained by the Contractor, less the workstation and server hardware procured by Omnitrans.
- 10.2.2.2 Where the maintenance services require equipment repairs that exceed the response period requirement, the Contractor shall provide spare equipment for the duration of the repair.
- 10.2.2.3 Proponents shall propose a recommended Spare Parts List, and associated quantities to be procured under this contract, to meet the response period



requirements of the maintenance agreement. The Spare Parts List shall include all replacement parts, components, and sub-assemblies of equipment provided under this contract.

#### 10.2.3 Software Maintenance

- 10.2.3.1 All central system software developed by the Contractor shall be maintained under the maintenance agreement between the Contractor and Omnitrans.
- 10.2.3.2 All central system Commercial Off-the-Shelf Software supplied by the Contractor shall be maintained under the maintenance agreement between the Contractor and Omnitrans.
- 10.2.3.3 The Contractor shall be responsible for obtaining and renewing all software licenses required for the operation of the System through Warranty period.
- 10.2.3.4 The Contractor shall be permitted to provide software maintenance services remotely via a provided VPN connection.

#### 10.2.4 Maintenance Records

- 10.2.4.1 During the life of the maintenance agreement, the Contractor shall maintain maintenance records of services provided. As a minimum, maintenance records shall include:
  - 10.2.4.1.1 Date and time of maintenance service request;
  - 10.2.4.1.2 Description of maintenance service request
  - 10.2.4.1.3 Date and time of Contractor acknowledgement of maintenance service request
  - 10.2.4.1.4 Description of Contractor performed diagnostics
  - 10.2.4.1.5 Date and time of corrective measures taken
  - 10.2.4.1.6 Description of corrective measures taken including on-site arrival date and time
  - 10.2.4.1.7 Date and time of problem resolution or system restoration (in the event of service interruption)
- 10.2.4.2 Maintenance records shall also log the attributes of Contractor initiated maintenance services such as equipment recalls or software upgrades.

### 11 WORKPLACE SAFETY

The Contractor shall ensure that all of his operations strictly adhere to all Federal, State, and Local safety and environmental laws and regulations. Omnitrans, in accordance with the dual employer provision, reserves the right to correct unsafe practices by the contractor's employees, or to stop work until the Contractor makes the necessary corrections. In addition:

A. Smoking

Omnitrans uses designated areas for smoking. Smoking is not allowed at anytime in the bus yard, on or in any buildings, or by the entrances to any buildings. Smoking by employees of the Contractor, or his sub-contractors, shall not create a hazardous condition for themselves, co-workers, or employees and property of Omnitrans.

B. Eye Protection

- a. Per Omnitrans eye protection policy, ANSI Z87 approved eye protection shall be worn by all persons while conducting business outside the boundaries of the established "green zone". The policy also requires that eye protection be utilized if hazardous work is being conducted within the "green zone". The Contractor shall ensure that all of its employees have been provided eye protection that meets the requirement.
- b. The project manager, or his designee, reserves the right to stop the contractor's work in the event that a contractor employee is in violation, and that work will remain stopped until the violation is corrected.

C. Vests

- 1) Contractors and their employees working or performing services in outside work zones shall wear ANSI Class 2 Safety Vests. ANSI Class 2 Safety Vests must be worn at all times in the bus yard and in the relief vehicle locations.
- 2) Safety Vests are not required while in designated, marked with painted green borders Safety Zones on Agency property or while on sidewalks, curbs, or raised pavement.

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



**ITEM #F9 - CONTRACT OPS14-03  
SUPERVISOR VEHICLE ON-BOARD VIDEO  
SURVEILLANCE (OBVSS)**

**SENSITIVE SECURITY INFORMATION  
PAGES 344-382 REMOVED**



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SUPERVISOR VEHICLE ON-BOARD VIDEO  
SURVEILLANCE (OBVSS)**

**SENSITIVE SECURITY INFORMATION  
PAGES 344-382 REMOVED**



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## **ATTACHMENT C – SPECIAL CONDITIONS**

### **OPS14-03 SUPERVISOR VEHICLE OBVSS**

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**1. SUPERVISION AND SUPERINTENDENCE**

- A. The Contractor shall supervise and direct the work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the work in accordance with the Contract.
- B. The Contractor shall be responsible to see that the completed work complies with the Contract.

**2. DISPUTE RESOLUTION**

Any disputes between 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 Contractor and Omnitrans.
- B. If the dispute remains unresolved fifteen (15) days after it first arises, Contractor 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 Contractor.
- 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, Contractor shall proceed diligently with performance in accordance with the Contract and Omnitrans' CEO/General Manager's recommended decision.

**3. LICENSING, PERMITS AND INSPECTION COSTS**

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

#### **4. INTEGRATION**

No oral order, objection, direction, claim or notice by any party or person shall affect or modify any of the terms or obligations contained in the RFP. The RFP represents the entire agreement of OMNITRANS and the Contractor.

#### **5. CONTRACTOR QUALIFICATIONS**

- A. CONTRACTOR must furnish statements of their qualifications, capabilities, and financial capacities to provide the services, in the manner required, when required and at the prices stated in their PROPOSAL.
- B. CONTRACTOR must be a person, Contractor, or corporation that has in operation, or has the capability to have in operation, a manufacturing plant adequate to assure delivery of all equipment within the time specified in the intended contract. PROPOSER shall have adequate engineering and service personnel to satisfy all engineering or service problems that may arise during the warranty period.
- C. CONTRACTOR must have provided the requirements of this contract to other entities for at least five (5) years.
- D. If at any time the CONTRACTOR'S qualifications are in doubt, Omnitrans reserves the right to suspend or cancel the contract(s) and award a new contract according to the terms and conditions contained herein.
- E. Additional qualifications follow in the Scope of Work.

#### **6. PAYMENT PROVISIONS IN THIRD PARTY CONTRACTS**

- A. Advance Payments  
Omnitrans will not participate in funding payments to a contractor prior to the incurrence of costs by Contractor.
- B. Progress Payments
  - 1) Progress payments will be based on the milestones set forth below. The value paid for each milestone will be based on the percentage of completion for the milestone. The total value of each milestone equals the percentage shown multiplied by the total contract value, excluding optional items.

- 2) The Contractor's invoices shall account the work events described in the progress payment schedule below. Progress payment invoices shall not exceed the amounts as stated in the Contract.
- 3) Applications for Payment shall be supported by evidence which is required by this Section and such other documentation as Omnitrans may require.
- 4) For capital projects, Omnitrans pays invoices on the first Thursday of each month.
  - a) Subject to verification of receipt, accuracy, and quality of orders, invoices received will be paid on the first Thursday after the received date of an invoice.
  - b) If received within the 10 days prior to the first Thursday, payment may be delayed to the following month.
- 5) Omnitrans may withhold all or part of a payment to the extent deemed necessary by Omnitrans to protect Omnitrans from loss because of but not limited to:
  - a) Defective work not remedied;
  - b) Third party claims filed, or evidence reasonably indicating that a third party claim will be filed;
  - c) Failure of the Contractor to make payments properly to subcontractors or suppliers, or for labor, materials, or equipment;
  - d) Reasonable evidence that the work cannot be completed for unpaid balance of the Contract sum;
  - e) Damage to Omnitrans;
  - f) Reasonable evidence that the work or any portion of work will not be completed in accordance with the approved progress schedule;
  - g) The Contractor's failure to carry out the work in accordance with the Contract; or
  - h) The Contractor's failure to comply with any provision or requirement of the Contract.
- 6) Notwithstanding the payment provisions of this Contract, Omnitrans may make partial payment against any milestone when Omnitrans deems such payment to be appropriate and in the best interest of Omnitrans.
- 7) No approval for payment, nor any payment by Omnitrans, shall constitute an acceptance of any System element or other Contract deliverables that are not in accordance with the Contract.

C. Final Payment Application

Administrative actions and submittals that must precede or coincide with submittal of the final payment Application for Payment include the following:

- 1) Successful completion of all testing requirements and resolution of outstanding punchlist items
- 2) Delivery of all devices, software, spares, training, and other deliverables required under this contract
- 3) Completion of project closeout requirements
- 4) Assurance that unsettled claims will be settled
- 5) Assurance that work not complete and accepted will be completed without undue delay
- 6) Transmittal of required project construction records to Owner
- 7) Proof that taxes, fees, and similar obligations have been paid
- 8) Removal of surplus materials, rubbish and similar elements

7. **BONDING REQUIREMENTS**

A. Performance Bond

- 1) A *performance bond* is executed in connection with a contract to secure fulfillment of all Contractor's contractual obligations.
- 2) Omnitrans must receive this bond within three weeks of contract award.
- 3) On the part of Contractor for **100 percent** of the **contract price**.
- 4) Bond shall continue in full force and effect for the guarantee period.

B. Payment Bond

- 1) A *payment bond* is one executed in connection with a contract to assure payment, as required by law, of all persons supply labor and material in the execution of the work provided for in the contract.
- 2) This bond shall remain in full force and effect from the date of signing of the Contract until the expiration of the one-year guarantee hereinafter specified.
- 3) Omnitrans must receive this bond within three weeks of contract award.
- 4) Payment bond amount shall be **100 percent of the contract price**.

C. Other Negotiable Instruments

If authorized by Omnitrans staff, other negotiable instruments may be accepted by Omnitrans in lieu of performance and payment bonds as follows:

- 1) Cash deposit or Certified check.
- 2) Irrevocable letter of credit drafted on behalf of proposer by a qualified financial institution.

**8. SUBCONTRACTOR PAYMENT**

- A. Contractor shall, **within 10 days of receipt of each progress payment**, pay its subcontractors for work which meets the requirements of the subcontract and which is completed, or is partially completed and qualifies for a progress payment.
- B. Contractor shall pay subcontractors notwithstanding that Contractor may have a claim for extra payment from Omnitrans which has not been determined to be payable or which has not been paid.
- C. This provision does not affect Contractor's right to withhold payment due to a stop work notice issued on lower-tier subcontractors. A subcontractor's failure to complete work required by the contract or as a result of damage to the project by the subcontractor for which the subcontractor is responsible.

**9. FINAL COMPLETION AND PAYMENT**

- A. After inspection and acceptance by Omnitrans of all work, Contractor will\\shall prepare a final statement of all costs for work performed and for which Omnitrans is obligated to pay, including:  
Retention (not applicable)  
Change orders  
Extra work
- B. Other related amounts by virtue of work performed by Contractor in accordance with this contract.
- C. Thirty (30) days after the filing of Notice of Completion, but not prior to the receipt of the final invoice from Contractor, Omnitrans will process the final payment invoice for the total retention less any allowable deductions.

**10. USE OF COMPLETED PORTIONS**

- A. When the work or any portion of it is sufficiently complete to be utilized or placed into service, Omnitrans shall have the right upon written notification to the Contractor to utilize such portions of the work and to place the operable portions into service and to operate same.
- B. Upon said notice and commencement of utilization or operation by Omnitrans, the Contractor shall be relieved of the duty of maintaining the portions so utilized or placed into operation; provided, however, that nothing in this article shall be construed as relieving the Contractor of the full responsibility for completing the work in its entirety, for making good defective work and

materials, for protecting the work from damage, and for being responsible for damage and for the work as set forth in the Contract nor shall such action by Omnitrans be deemed completion and acceptance, and such action shall not relieve the Contractor, his sureties, or insurers of the provisions of CONTRACTOR'S INSURANCE, INDEMNITY, and GUARANTEES.

**11. PROJECT COMPLETION**

Project completion shall be defined as the date on which it is agreed by Omnitrans and its representatives, Contractor and permitting agencies that the project is accepted.

**12. OBLIGATION TO CONTINUE WORK**

A. Contractor, in the event of any dispute or controversy with Omnitrans over any matter whatsoever, shall not cause any delay or cessation in or of contractor's work, but shall proceed under the contract with the performance of the work required thereby.

B. Contractor shall include in their documents with any and all levels of tier subcontractors the following:

Subcontractor, in the event of any dispute or controversy with contractor or any other subcontractor over any matter whatsoever, shall not cause any delay or cessation in or for subcontract's work or the work of any other subcontract or of Contractor but shall proceed under that subcontract agreement with the performance of the work required thereby.

**13. EXAMINATION OF WORK SITE**

Proposer shall visit and become acquainted with the work site and the conditions thereof to fully understand the scope of work and attendant constraints of the work under contract.

**14. OBSTRUCTIONS**

The Contractor shall remove all structures or other obstructions of any character necessary to accommodate the work. Where such obstructions consist of improvements not required by law to be removed by Omnitrans, improvements shall be removed, maintained, and permanently replaced by the Contractor at Contractor's expense except as otherwise specifically provided in the Contract.

**15. QUALITY OF THE WORK**

**A. AUTHORITY OF THE DIRECTOR OF OPERATIONS**

The Director of Operations, and/or his designee, shall decide any and all questions which may arise as to the interpretation of the plans and specifications, and shall have authority to disapprove or reject materials and



equipment furnished and work performed which, in the Director's opinion, is not in accordance with the Contract.

**B. SUPPLEMENTAL DRAWINGS**

- 1) The plans may be supplemented by such drawings as are necessary to better define the work. All such drawings delivered to the Contractor by the Director of Operations shall be deemed written instructions to the Contractor. If the Contractor believes that any supplemental drawings call for changes in the work for which the contract amount or time for completion should be changed, Contractor shall not proceed with the changes in the work so called for and shall' within seven days of the receipt of the supplemental drawings, notify the Director of Operations in writing of his estimate of the changes in the contract amount and time for completion he believes to be appropriate.
- 2) No payment for changes in the work will be made and no change in the time for completion by reason of changes in the work will be made, unless the changes are covered by a written change order approved by Omnitrans in advance of the Contractor's proceeding with the changed work.

**C. CONFORMITY WITH CONTRACT DOCUMENTS**

- 1) The work shall conform to the lines, grades, dimensions, tolerances, and material and equipment requirements shown on the plans or as otherwise set forth in the specifications. Although measurement, sampling, and testing may be considered evidence as to such conformity, the Director of Operations shall be the sole judge as to whether the work or materials deviate from the plans and specifications, and his decision as to any allowable deviations therefore shall be final.
- 2) If specific lines, grades, and dimensions are not shown on plans, those furnished by the Director of Operations shall govern.

**D. MANUFACTURER'S INSTRUCTIONS**

All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier, or distributor, except as otherwise specifically provided in the Contract.

**16. SAFETY**

Contractor shall be solely and completely responsible for conditions of the job site, including safety of all persons and property during performance of the work, and the Contractor shall fully comply with all state, federal and other laws, rules, regulations, and orders relating to safety of workers and all others.

**17. WARRANTY OF TITLE**

No materials, supplies, or equipment for the work under this contract shall be purchased subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest therein or any part thereof is retained by the seller or supplier. The Contractor warrants clear and good title to all materials, supplies, and equipment installed and incorporated in the work and agrees upon completion of all work to deliver the premises, together with all improvements and appurtenances constructed or placed thereon by him, to Omnitrans free from any claims, liens, encumbrances, or charges and further agrees that neither he nor any person, Contractor, or corporation furnishing any material or labor for any work covered by the contract shall have any right to a lien upon the premises or any improvement or appurtenance thereon, provided that this shall not preclude the Contractor from installing metering devices or other equipment of utility companies or of municipalities, the title of which is commonly retained by the utility company or the municipality. Nothing contained in this clause, however, shall defeat or impair the right of such persons furnishing materials or labor under any bond given by the Contractor for their protection or any right under any law permitting such persons to look to funds due the Contractor in the hands of Omnitrans. The provisions of this clause shall be inserted in all subcontracts and material contracts, and notices of its provision shall be given to all persons furnishing materials for the work when no formal contract is entered into for such materials.

**18. EXISTING CONDITIONS**

- A. Drawings, if any, show existing conditions as supposed or believed. Drawings are based on the best evidence and information available, but no warranty is thereby expressed or implied that such conditions actually exist.
- B. Omnitrans and any of its consultants shall not be liable for any loss sustained by Contractor as a result of any variance between existing conditions as indicated on the plans and the actual conditions revealed during the progress of the work, provided that the Contractor should have reasonably known of or identified the existing condition.

**19. WARRANTY OF SCOPE AND CONTRACTOR FIXED PRICE**

- A. Contractor represents and warrants that in setting the Contractor Fixed Price herein, that:
  - 1) Contractor has done so after a thorough review of the description of work, plans, drawings and specifications;
  - 2) Contractor deems that the aforementioned documents are sufficiently complete to enable Contractor to establish the Contractor Fixed Price set forth herein;
  - 3) Contractor deems the contract price is adequate to provide all the necessary labor, service, equipment or material to complete the work as

stated herein, according to industry standards and good workmanship, and within the contract time set forth herein.

- B. Contractor acknowledges that except for adjustments in the Contractor Fixed Price by change orders, Contractor shall build the project in conformance to the contract documents and Omnitrans shall in no event be chargeable for more than the Contractor Fixed Price.

**20. STANDARDS, CODES, SAMPLES, AND TESTS**

- A. Whenever reference is made to a standard, code, specification, or test and the designation representing the date of adoption or latest revision thereof is omitted, it shall mean the latest revision of such standard, code, specification, or test in effect on the day the Request for Proposals is dated.
- B. Tests shall be made in accordance with commonly recognized procedures of technical organizations and such special procedures as may be prescribed elsewhere in the plans and specifications. The Contractor shall furnish without charge such samples for testing as may be required by the Director of Operations.

**21. OBSERVATION OF WORK BY DIRECTOR OF OPERATIONS**

- A. The Director of Operations or his designee, shall at all times have access to the work during installation and shall be furnished with every reasonable facility for ascertaining full knowledge respecting the progress, workmanship, and character of materials and equipment used and employed in the work.
- B. Whenever the Contractor varies the normal period during which work or any portion of it is carried on each day, he shall give timely notice to the Director of Operations so that the Director of Operations or his designee may be present to observe the work in progress. If the Contractor fails to give such timely notice, any work done in the absence of the Director of Operations will be subject to rejection.
- C. The observation, if any, by the Director of Operations or his designee of the work shall not relieve the Contractor of any of his obligations to fulfill the contract as prescribed. Defective work shall be made good, and materials and equipment furnished and work performed which is not in accordance with the Contract Documents may be rejected notwithstanding the fact that such materials, equipment, and work have been previously observed by the Director of Operations or that payment therefore has been included in an estimate for payment.

**22. REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORK**

- A. Any work which does not conform to the requirements of the Contract shall be remedied or removed and replaced by the Contractor, together with any other work which may be displaced in so doing, and no compensation will be

allowed Contractor for such removal, replacement, or remedial work. All nonconforming materials shall be immediately removed from the site.

- B. Any work done beyond the lines and grades shown on the plans or established by the Director of Operations or any changes in, additions to, or deductions from the work done without written authority will be considered as unauthorized and will not be paid for. Work so done may be ordered remedied, removed, or replaced at the Contractor's expense.
- C. Upon failure on the part of the Contractor to comply promptly with any order of the Director of Operations or his designee made under the provisions of this Contract, the Director of Operations or his designee shall have authority to cause non-conforming materials, rejected work, or unauthorized work to be remedied, removed, or replaced at the Contractor's expense and to deduct the costs from any monies due to the Contractor.

### **23. SUSPENSION OF WORK BY OMNITRANS**

- A. Omnitrans may, without cause, order Contractor in writing to suspend, delay, or interrupt the work in whole or in part for such period of time as Omnitrans may determine.
- B. An adjustment shall be made for increases in the cost of performance of the contract, including profit on the increased cost of performance caused by suspension, delay or interruption.
- C. No adjustment shall be made to the extent that:
  - 1) Performance is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor is responsible;
  - 2) Force Majeure;
  - 3) An equitable adjustment was made under another provision of this contract.
- D. Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee. Any such petitions for adjustments are subject to audit, Federal Cost Principles, and any other provision of this contract.

***\*End of Special Conditions\****

**ATTACHMENT D - SAFETY AND SECURITY OFFICE  
SENSITIVE SECURITY INFORMATION (SSI) REQUIREMENTS**

**Purpose of SSI**

As a result of the terrorist attacks of September 11, 2001, Congress passed legislation creating the Transportation Security Administration (TSA). The Agency is charged with making improvements to the country's transportation security systems and protecting against future terrorist attacks. The purpose of Omnitrans' Sensitive Security Information Procedure is to establish minimum standards for handling Sensitive Security Information (SSI) in order to minimize the risk of future threats and ensure that all employees and Contractors understand and implement the Agency's requirements for marking, storing, controlling, transmitting, destroying, and managing the release or withholding of SSI.

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**STORAGE OF SSI**

**REQUIREMENT.** All Agency employees and Contractor employees possessing SSI are responsible for ensuring that the information and records containing SSI are safeguarded at all times from disclosure to unauthorized persons. When the SSI for which an individual is responsible is not under the individual's direct physical control, the individual is responsible for ensuring that it is safeguarded and protected in such a way that it is not physically or visually accessible to persons who do not have a need to know, as defined in 49 CFR Parts 15 and 1520. For example: when unattended, SSI must be secured in a locked container or office or other restricted access area.

**CONTROL AND RELEASE OF Contractor COPIED SSI.** Contractors must provide prior notification in writing, through the Procurement Department, to the originator of SSI when the Contractor needs to make copies of SSI. This written notification must contain the following minimum information:

- a. Positive identification of SSI (title, document numbers as applicable, etc.).
- b. Purpose for making the copies.
- c. Quantity of copies.
- d. Dissemination of copies (the Contractor must verify and ensure that all recipients are authorized to receive SSI).

**DESTRUCTION OF SSI.**

1. **REQUIREMENT.** When copies of records containing SSI are no longer needed, they must be promptly and completely destroyed.
2. **METHODS.** The objective of a selected destruction method is to destroy the material so that recovery of the sensitive information is difficult, if not impossible. Material containing SSI must be destroyed by one of the following methods, listed in order of preference:

- a. Any means approved for the destruction of designated SSI material as specified in this policy. The approved methods include confetti/crosscut shredding or irreparably destroying.
  - b. Tearing it into small pieces and assimilating it with other waste material. When destroying SSI by hand, it must be cut or torn into pieces measuring not more than 1/2 inch on a side, and mixed with other wastepaper material in the process.
3. **Contractor NOTIFICATION OF DESTRUCTION OF SSI.** When a Contractor proposes to destroy copies of records containing SSI, the Contractor must first provide notification in writing, through the Procurement Department to the information originator, of its destruction. The Contractor must provide the following minimum information regarding the destruction of SSI:
- a. Identification of the information to be destroyed, (title, document/copy numbers(s) as applicable, etc.).
  - b. Quantities of copies destroyed.
  - c. Date and place of destruction.
  - d. Method of destruction.
  - e. Residual SSI remaining in custody of the Contractor.

### **LABELING OF SSI.**

SSI records require a protective marking and a distribution limitation statement to inform users of their security-sensitive nature and the need to protect them from unauthorized distribution as defined in 49 CFR §15.13 and §1520.13.

SSI records in both printed and electronic form must be marked as follows:

### **SENSITIVE SECURITY INFORMATION**

and must include the distribution limitation statement specified in the regulation:

**Warning: This record contains Sensitive Security Information that is controlled under 49 CFR parts 15 and 1520. No part of this record may be disclosed to persons without a “need to know”, as defined in 49 CFR parts 15 and 1520, except with the written permission of the Administrator of the Transportation Security Administration or the Secretary of Transportation. Unauthorized release may result in civil penalty or other action. For U.S. government agencies, public disclosure is governed by 5 U.S.C. 552 and 49 CFR parts 15 and 1520.**

For paper SSI records, the protective marking must appear at the top of every page, including the outside front and back covers, binder covers, and title pages; and the distribution limitation statement must be at the bottom of every page, including the outside front and back covers, binder covers, and title pages. The protective marking should be printed or stamped in a font size larger than the text of

the record. Electronic documents must be similarly marked and the distribution limitation statement included on every page.

For non-paper SSI records such as videotape and audio recordings, the protective marking and the distribution limitation statement must appear clearly and conspicuously on the record so that the viewer or listener is reasonably likely to see or hear them. In addition, non-paper SSI records should be kept in containers that are clearly marked on the outside.

Floppy disks, CDs, DVDs, tapes, and other media on which electronic SSI is stored should also be marked, either directly on the medium or as a label attached to it. Alternatively, the media can be stored in marked containers. SSI records stored electronically on thumb drives must be password-protected or encrypted. However, the thumb drives should not have any SSI marking on them.

**UNAUTHORIZED DISCLOSURE OF SSI.**

Contractor with knowledge of an inadvertent release of SSI must immediately notify Omnitrans.

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**I have read the Sensitive Security Information (SSI) requirements as stated above and agree to safeguard all SSI documents and any electronic versions at all times from disclosure to unauthorized persons according to Omnitrans' SSI Requirements.**

PRINT NAME & COMPANY	SIGNATURE	EMAIL ADDRESS

ITEM #       F10      

**DATE:** January 8, 2014

**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-MNT14-85, PARTS WASHERS**

**FORM MOTION**

Authorize the Interim CEO/General Manager to release Invitation for Bids IFB-MNT14-85 for the provision of the lease or purchase of fourteen Parts Washers and maintenance services.

**BACKGROUND**

Fourteen parts washers are currently under lease at the San Bernardino East Valley and Montclair West Valley facilities for the cleaning of parts for Omnitrans' Maintenance Department. The solicitation includes preventative maintenance on all washers, replacement of washers, if required, cleaning solution, and waste disposal. The Federal Transit Administration (FTA) Circular 4220.1F requires recipients to conduct a lease versus buy analysis on equipment purchases to determine the most economical and practical procurement method.

The East Valley location requires eight (8) Parts Washers and one (1) heated mobile washer and the West Valley facility requires four (4) Parts Washers and one (1) heated mobile washer.

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 \$140,000 for equipment, including full maintenance, supply and disposal.



### **FUNDING SOURCES**

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

Department	1200
Expenditure Code	505060

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

### **CONCLUSION**

By proceeding with this solicitation, Omnitrans will continue to have the ability to clean the parts used to keep the buses and equipment functioning.

PSG:JMS:CV

ITEM # F11

**DATE:** January 8, 2014

**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-MNT14-87  
PARKING LOT SWEEPING SERVICES**

### **FORM MOTION**

Authorize the Interim CEO/General Manager to release Invitation for Bids, IFB-MNT14-87 for the provision of Parking Lot Sweeping Services for a three (3) year base period, and two single one-year options beginning March 14, 2014, and ending no later than March 13, 2019.

### **BACKGROUND**

The current contract for parking lot sweeping services expires March 13, 2014. Omnitrans utilizes weekly parking lot sweeping services for East Valley, West Valley, and “I” Street locations. The weekly services include sweeping of bus yards and employee lots and bi-weekly pressure washing of bus yards. Beginning approximately March 2014, the responsibility of parking lot sweeping services for the sbX Green Line corridor park and rides will be turned over to Omnitrans. Those services have been included in this solicitation.

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 for the base period, plus the two one-year options.

### **FUNDING SOURCE**

The cost associated with this procurement will be budgeted in the Maintenance Department’s Operating budget as follows:

Department Number 1200  
Expenditure Code 503110

\_\_\_\_\_ Verification of Funding Sources and Availability of Funds.

(Verified and initialed by Finance)

**CONCLUSION**

By proceeding with this solicitation, Omnitrans' properties will be aesthetically maintained.

PSG:JMS:aa