



BOARD OF DIRECTORS MEETING
WEDNESDAY, JULY 2, 2014 – 8:00 A.M.
OMNITRANS METRO FACILITY
1700 WEST 5TH STREET
SAN BERNARDINO, CA 92411

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

A. CALL TO ORDER

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

B. ANNOUNCEMENTS/PRESENTATIONS

1. Next Board Meeting: Wednesday, August 6, 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.

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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 #E9, Action on Consent Calendar.

1. Approve Board Minutes – June 4, 2014
2. Receive and File Executive Committee Minutes – April 4, 2014
3. Receive and File Administrative and Finance Committee Minutes – May 15, 2014
4. Receive and File Construction Progress Report No. 29 through May 24, 2014 – sbX E Street Corridor BRT Project

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**BOARD OF DIRECTORS MEETING
WEDNESDAY, JULY 2, 2014 – 8:00 A.M.
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SAN BERNARDINO, CA 92411**

E. CONSENT CALENDAR CONTINUED	
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The following items do not legally require any public testimony, although the Chair may open the meeting for public input.	
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3. Receive and File Omnitrans' Director of Finance Final Report – Forward Fuel Purchases through June 2014 and Approve Increase in Quantity of Gallons Hedged for Future Hedge Program	132
4. Authorize Award, (Bench), Contract MNT14-128 (A-C), Bus Window Replacement	136
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CLOSED SESSION	
Conference with Real Property Negotiator Mitchell Alderman, San Bernardino Associated Governments (SANBAG), Government Code Section 54956.8, subdivision (a), San Bernardino County Transportation Commission v. Affaitati, et. al., San Bernardino County Superior Court Case No. CIVDS 1304981, APN 136-021-280, 655 West Rialto Avenue, San Bernardino, CA	
I. REMARKS AND ANNOUNCEMENTS	
J. ADJOURNMENT	

ITEM # D1
DATE: July 2, 2014

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

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

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

Staff hereby provides a listing of principals and subcontractors associated with action items on the agenda for the Board of Director's Meeting scheduled July 2, 2014.

Item	Contract	Principals & Agents	Subcontractors
E7	Authorize Award, Purchase Order Modular Wheelchair Restraint Systems	<i>Gillig LLC Hayward, CA Chuck O'Brien Vice President</i>	N/A
F4	Authorize Award (Bench) Contract MNT14-128 (A-C) Bus Window Replacement	<i>(A) JAJ Enterprises, LLC Coburg, OR Paul Dixon, Regional Account Representative</i> <i>(B) Transitguard, Inc. Pagosa Springs, CO P. Mike Candelaria Director</i> <i>(C) New Flyer Winnipeg, Canada Diti Lodhavia Contract Administrator</i>	N/A
F5	Authorize Award Contract HR14-156 Employee Recognition Awards	<i>Caras, LLC DBA Eagle Recognition Corp. Tucker, GA John C. Ainsworth VP Sales & Marketing</i>	N/A

PSG/JS

CONFLICT OF INTEREST FORM

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

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

BOARD MEMBER INFORMATION

BOARD MEMBER NAME	CITY/COUNTY NAME	MEETING DATE

CAMPAIGN CONTRIBUTIONS

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

FINANCIAL INTEREST

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

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

SIGNATURE

Board Member Signature

Date

ITEM # E1

**BOARD OF DIRECTORS' MEETING
MINUTES OF JUNE 4, 2014**

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, June 4, 2014, at the Omnitrans Facility located at 1700 West 5th Street, San Bernardino, California.

1. Invocation
2. Pledge of Allegiance

BOARD MEMBERS PRESENT

Mayor Pro Tem Alan Wapner, City of Ontario – Chair
Mayor Pro Tem Sam Spagnolo, City of Rancho Cucamonga
Council Member Ron Dailey, City of Loma Linda
Mayor Carey Davis, City of San Bernardino
Mayor Paul Eaton, City of Montclair
Mayor Pro Tem Paul Foster, City of Redlands
Council Member Frank Gonzales, City of Colton
Supervisor Josie Gonzales, County of San Bernardino
Mayor Ed Graham, City of Chino Hills
Council Member Penny Lilburn, City of Highland
Mayor Ray Musser, City of Upland
Supervisor Gary Ovitt, County of San Bernardino
Mayor Pro Tem Ed Palmer, City of Rialto
Council Member Dick Riddell, City of Yucaipa
Mayor Pro Tem John Roberts, City of Fontana
Supervisor Janice Rutherford, County of San Bernardino
Mayor Walt Stanckiewicz, City of Grand Terrace
Mayor Dennis Yates, City of Chino

BOARD MEMBERS NOT PRESENT

Supervisor Robert Lovingood, County of San Bernardino
Supervisor James Ramos, County of San Bernardino

OMNITRANS' ADMINISTRATIVE STAFF PRESENT

P. Scott Graham, CEO/General Manager
Diane Caldera, Director of Operations
Jack Dooley, Director of Maintenance
Marge Ewing, Director of Human Resources
Sam Gibbs, Director of Internal Audit Services
Jennifer Sims, Director of Procurement
Don Walker, Director of Finance
Wendy Williams, Director of Marketing
Anna Rahtz, Acting Director of Planning
Alesia Atkinson, Contract Administrator
Jeremiah Bryant, Service Planning & Scheduling Manager
Andres Ramirez, Construction Manager
Joanne Cook, Contract Administrator
Mark Crosby, Loss Prevention Supervisor
Vicki Dennett, Assistant to CEO/General Manager
James Deskus, IPMO Project Analyst
Ross Hrinko, Safety & Regulatory Compliance Specialist
Seung Lee, Safety & Regulatory Compliance Specialist
Ray Maldonado, Employee Relations Manager
Maurice Mansion, Treasury Manager
Eugenia Pinheiro, Contracts Manager
Krystal Turner, Contracts Review Analyst
Christine VanMatre, Contract Administrator

OTHER

Carol Greene, Legal Counsel

B. ANNOUNCEMENTS/PRESENTATIONS

Chair Wapner announced the next regular meeting is scheduled Wednesday, July 2, 2014, at 8:00 a.m.

C. COMMUNICATIONS FROM THE PUBLIC

The following individuals spoke on behalf of the Center for Community Action and Environmental Justice (CCA EJ): Ericka Flores, Maria Hernandez, Teresa Flores-Lopez, Jose Velasco, Maria Birrueta, Susana Negrete, and Erlinda Mojio. The speakers spoke regarding the health and safety risks of the Liquefied Natural Gas (tanks) at the San Bernardino facility and indicated they are looking forward to working with the consultant to address the safety risks and a possible solution to move the tanks, stating that they would hold the Board accountable for any action taken and thanking the Board for their willingness to work with them.

Board Member Ovitt arrived 8:06 a.m., Board Member F. Gonzales arrived at 8:16 a.m. Member Musser stepped out at 8:24 a.m.

Chair Wapner confirmed that the two proposals, one for the risk assessment, and the other for the Remote Fueling Study, were released with proposals due in about 30 days. Once staff has an opportunity to evaluate the proposals, a recommendation will be presented to the Board of Directors for award. A special meeting of the Board of Directors will be scheduled to discuss the results of the studies.

D. POSSIBLE CONFLICT OF INTEREST ISSUES

There were no Conflicts of Interest identified.

E. CONSENT CALENDAR

1. Approve Board Minutes – May 7, 2014
2. Receive and File Administrative and Finance Committee Minutes – April 17, 2014
3. Receive and File Agency Management Report – April 2014
4. Receive and File Construction Progress Report No. 28 through April 25, 2014 – sbX E Street Corridor BRT Project
5. Receive and File Key Performance Indicator – Labor, Operations Absenteeism, Represented Employees
6. Approve Membership Dues for American Public Transportation Association
7. Approve Sole Source Contract ISD-13015, Safety and Security Radio and Pager Communication System Access
8. Press Articles and Letters of Interest to the Board

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

Member Musser returned at 8:30 a.m.

F. DISCUSSION ITEMS

- 1) CEO/General Manager's Report

CEO/General Manager Scott Graham reviewed the CEO/General Manager's Report, which included a presentation by Director of Marketing Wendy Williams, who provided an update on the sbX line and Marketing's efforts to increase ridership on the route.

- 2) Adopt Fiscal Year 2014-2015 Marketing Plan

Upon conclusion of the presentation made by Director of Marketing Wendy Williams, the Board emphasized the importance for Omnitrans to closely monitor ridership and consider new ways to market our service to ensure that the Agency meets or exceeds the >2.9% increase in ridership. Suggestions included partnering with other agencies, such as the Air Quality Management District, and working closer with high schools since many districts no longer provide bus service to its students. The Board also suggested that copies of commercials or public service announcements be provided to each member entity for use on local television stations.

M/S (Eaton/Spagnolo) that adopted Fiscal Year 2014-2015 Marketing Plan. Motion was unanimous by Members present.

G. PUBLIC HEARINGS

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

M/S (Graham/Ovitt) that approved the Call for Public Hearing concerning the Federal Transit Administration (FTA) §5307 and §5339 Funding for Fiscal Year 2015, to be held at 8:00 a.m., Wednesday, July 2, 2014, at the Omnitrans Metro Facility, 1700 West Fifth Street, San Bernardino, CA 92411. Motion was unanimous by Members present.

H. BOARD BUSINESS

The Board adjourned to Closed Session at 8:58 a.m. Open Session reconvened at 9:08 a.m.

Board Chair Wapner announced that no reportable action was taken during Closed Session.

I. REMARKS AND ANNOUNCEMENTS

Member Lilburn expressed appreciation for assistance provided by Stops and Stations Supervisor Mel Cabang in finding a new bus stop location for a senior housing project.

J. ADJOURNMENT

The Board adjourned at 9:10 a.m. The next regular meeting is scheduled July 2, 2014, at 8:00 a.m., with location posted on the Omnitrans website and at Omnitrans' San Bernardino Metro Facility.

Prepared by:

Lourdes Sandoval, Administrative Secretary

ITEM # E2

**EXECUTIVE COMMITTEE MEETING
MINUTES
APRIL 4, 2014**

A. CALL TO ORDER

The Executive Committee meeting was called to order by Vice Chair Sam Spagnolo at 9:02 a.m., Friday, April 4, 2014.

COMMITTEE MEMBERS ATTENDING

Mayor Pro Tem Alan Wapner, Board Chair – Arrived at 9:03 a.m.
Mayor Pro Tem Sam Spagnolo, Vice Chair
Mayor Ed Graham, City of Chino Hills
Council Member Penny Lilburn, City of Highland
Council Member Dick Riddell, City of Yucaipa

OMNITRANS STAFF ATTENDING

P. Scott Graham, CEO/General Manager

B. ANNOUNCEMENTS/PRESENTATIONS

1. Next Committee Meeting: Friday, June 6, 2014, 9:00 a.m.
Omnitrans Metro Facility

Note: The May 2, 2014, meeting is canceled.

C. COMMUNICATIONS FROM THE PUBLIC

Mr. Todd Warden, Senior Public Information Specialist, Legislative & Public Affairs, for the South Coast Air Quality Management District (SCAQMD), provided free tickets to the 2014 Alternative Clean Transportation Expo, scheduled May 5-8, 2014. Additionally, he announced that the AQMD has free environmentally friendly paint and brake washers available for San Bernardino that is available to Omnitrans. Chair Wapner encouraged Omnitrans to take advantage of this opportunity.

D. POSSIBLE CONFLICT OF INTEREST ISSUES

There were no Conflict of Interest Issues.

E. DISCUSSION ITEMS

1. Approve Executive Committee Minutes – February 7, 2014

M/S (Spagnolo/Graham) that approved the Executive Committee Minutes of March 7, 2014. Motion was unanimous by Members present.

2. Risk Assessment Request for Proposals – Discussion

CEO/General Manager Scott Graham distributed a draft scope for the Risk Assessment developed to address the Center for Community Action and Environmental Justice's (CCA EJ) concerns on the Liquefied Natural Gas (LNG) tanks at Omnitrans' San Bernardino facility. He explained that staff's understanding of the Operations and Safety Committee action was that Omnitrans would develop the scope and hire a consultant, and the consultant would work with the stakeholders (two from CCA EJ, one from the school district, one from the local fire authority maintaining jurisdiction for the San Bernardino and Montclair facility), and requested confirmation that this understanding is correct.

Board Vice Chair Sam Spagnolo, as Chair of the Operations and Safety Committee, confirmed that the Committee's direction was to hire the consultant and have the stakeholders meet with the consultant as the study is conducted to address their concerns.

Board Chair Wapner emphasized the importance of ensuring that the community's issues are addressed in the scope. CEO/General Manager Graham explained that the scope was written broadly and includes tasks to address the concerns raised by the community, including their main concern on the explosive probability of the tanks. The CCA EJ will be able to provide specific, detailed questions for the Consultant to review.

Board Member Riddell suggested, and it was agreed, that once the consultant is onboard, the CCA EJ would be requested to put their concerns in writing for the consultant to address.

Based on the community's fears and concerns, it is important for Omnitrans to review the current municipal codes and the existing studies on file to assure the community that the tanks are still within compliance. Additionally, it is important for the consultant to review how other communities have dealt with this issue, that the consultant selected is familiar with San Bernardino demographics, and that the consultant is credible. The Committee also suggested that Omnitrans consider inviting a representative from the South Coast Air Quality Management District to speak on the issue.

Although the projected cost of the consultant is within the CEO/General Manager's authority to release the Request for Proposals (RFP), the authorization to release will be placed on the Consent Calendar of the Board Agenda for approval. It was agreed that this direction ensures transparency and provides an opportunity for any concerns on the proposed Scope be addressed before the RFP is released.

F. BOARD BUSINESS

The Committee adjourned to Closed Session at 8:43 a.m.

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 Committee reconvened to Open Session at 8:55 a.m., with no reportable action taken.

G. REMARKS AND ANNOUNCEMENTS

There were no remarks or announcements.

H. ADJOURNMENT

The Executive Committee adjourned at 8:56 a.m. The next Executive Committee Meeting is scheduled Friday, June 6, at 9:00 a.m., with location posted on the Omnitrans website and at the Omnitrans San Bernardino Metro Facility.

Prepared by:

Vicki Dennett, Assistant to CEO/General Manager

ITEM # E3

**ADMINISTRATIVE & FINANCE COMMITTEE
MINUTES OF MAY 15, 2014**

A. CALL TO ORDER

Committee Chair Ed Graham called the regular meeting of the Administrative and Finance Committee to order at 8:00 a.m., Thursday, May 15, 2014.

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

Committee Members Present

Mayor Ed Graham, City of Chino Hills – Committee Chair
Mayor Carey Davis, City of San Bernardino
Mayor Paul Eaton, City of Montclair
Council Member Frank Gonzales, City of Colton
Mayor Pro Tem John Roberts, City of Fontana
Mayor Walt Stanckiewicz, City of Grand Terrace
Mayor Pro Tem Alan Wapner, City of Ontario

Committee Members Not Present

Mayor Ray Musser, City of Upland

OmniTrans Administrative Staff Present

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
Anna Rahtz, Acting Director of Planning & Development Services
Jennifer Sims, Director of Procurement
Don Walker, Director of Finance
Wendy Williams, Director of Marketing
Jim Deskus, sbX Project Analyst
Maurice Mansion, Treasury Manager
Andres Ramirez, sbX Construction Manager

B. ANNOUNCEMENTS/PRESENTATIONS

The next Committee Meeting is scheduled Thursday, June 12, 2014, at 8:00 a.m.

C. COMMUNICATIONS FROM THE PUBLIC

There were no comments from the public.

D. POSSIBLE CONFLICT OF INTEREST ISSUES

There were no conflict of interest issues identified.

E. DISCUSSION ITEMS

1. Approve Administrative & Finance Committee Minutes – April 17, 2014

M/S (Eaton/Roberts) that approved the Committee Minutes of April 17, 2014. Motion was unanimous by remaining Members present.

2. Receive & File Forward Fuel Purchase Program Update for May 2014

Director of Finance Donald Walker presented the monthly Forward Fuel Purchase Update for May 2014. The contract closed almost 12 cents above the hedge price, which results in a recognized gain of \$18,075 for May. As the market price for fuel was higher in May than the budgeted price, the gain from the hedge price helps to offset the loss and a loss of only \$1,547 will be recognized for the month.

From February 2012 through May 2014, Omnitrans has recognized a total gain of \$58,318 on the settled hedge positions. As of two weeks ago, there was a projected unrecognized gain of \$18,325 for June, the last month of the current hedge contract. However, as of May 14, 2014, the unrecognized gain dropped to \$12,725 in this two week period. Over the entire 29-month hedge contract, Omnitrans is projected to recognize a total gain of \$71,000.

As approved by the Board of Directors, Omnitrans will enter into a new 12-month hedge contract when the price of the hedge hits \$.92 per gallon or less vs. the current price of \$1.04 per gallon.

This item was received and filed.

3. Recommend to Board of Directors, Receive and File Construction Progress Report No. 28 through April 25, 2014 – sbX E Street Corridor BRT Project

sbX Construction Manager Andres Ramirez announced that the sbX Revenue Service Date of April 28, 2014, was achieved and was met with success! The budget remains at

\$191.7M, with \$155.2M spent to date, for a total estimated cost at completion of \$188M. Lost time injuries remain at zero with over 401,000 man hours combined.

The Vehicle Maintenance Facility (VMF) is approximately 46% complete with completion now projected for December 2014. In the existing building (Building A), concrete installation is completed and the installation of the hydraulic scissor bus lift has begun, as has work on the exhaust shaft in the Battery Room.

Work has also progressed on Building B, with over-excavation complete and the foundation excavation started.

Board Member F. Gonzales arrived at 8:09 a.m.

In response to questions raised by Board Members regarding the bridge-plate issue on the sbX buses, Mr. Ramirez reported that the issue has been resolved, but there is a manual (suitcase) ramp available for Coach Operators should issues arise in the future. Director of Maintenance Jack Dooley further explained that the bridge plates were tested for four months prior to service and issues identified during testing were addressed. However, once service began and people were actually stepping onto the plates, failures occurred. Since service date, the program and controllers have been changed. New Flyer, the bus manufacturer, has been on top of the issue and is working with the bridge plate manufacturer, Ricon, to ensure all issues are addressed. Also reported was a new issue with the plates, whereby the screws in the plates that cover the bridge plates are coming loose and creating a trip hazard. The vendor has a temporary fix in place, but we are requesting that the plate covers be replaced to include more robust screws. He emphasized that staff is on top of the issues and are working close with the vendors toward resolution.

And, in response to an inquiry regarding ridership numbers, Director of Marketing Wendy Williams reported that the first week of free service saw an average of 3,000 passengers per day, with Route 2 recording nearly the same ridership. During Week 2, ridership on the sbX line was 1,300, with Route 2 remaining nearly the same as Week 1. Omnitrans was surprised that more riders didn't immediately migrate from Route 2. Marketing is using all communication tools available, including more outreach in the field, to address any confusion of passengers, such as whether the cost to ride is the same as other routes and whether existing passes can be used to ride, with additional promotions planned in June to attract new riders. One of the challenges Omnitrans is faced with is that the ridership projections for sbX established five years ago included the understanding that the San Bernardino Transit Center would also be operational. However, with its delay, the Transit Center is downtown at 4th and G, two-and-a-half blocks and around the corner from sbX and passengers have chosen not to make the walk around the corner to ride sbX.

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

F. REMARKS AND ANNOUNCEMENTS

Committee Chair Graham announced he would not be available for the Administrative and Finance Committee in June and someone else would have to lead the meeting.

G. ADJOURNMENT

The Administrative & Finance Committee meeting adjourned at 8:20 a.m. The next Administrative & Finance Committee Meeting is scheduled Thursday, June 12, 2014, at 8:00 a.m., with location posted on the Omnitrans website and at Omnitrans' San Bernardino Metro Facility.

Prepared by:

Vicki Dennett, Assistant to CEO/General Manager

ITEM # E4

DATE: July 2, 2014

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

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Andres Ramirez, sbX Construction Manager

SUBJECT: **CONSTRUCTION PROGRESS REPORT NO. 29 THROUGH
MAY 24, 2014 - sbX E STREET CORRIDOR BRT PROJECT**

FORM MOTION

Receive and file Construction Progress Report No. 29 for the sbX E Street Corridor BRT Project through May 24, 2014.

This item was reviewed by the Administrative and Finance Committee at its June 12, 2014, meeting, and recommended to the Board of Directors for receipt and file.

BACKGROUND

This is Construction Progress Report No. 29 for the sbX E Street Corridor Project.

CONCLUSION

Receive and file Construction Progress Report No.29 for the sbX E Street Corridor BRT Project through May 24, 2014.

PSG:AR

Attachment



sbX E Street Corridor Bus Rapid Transit (BRT) Project

Construction Progress Report No. 29

As of May 24, 2014

Submitted By:

JACOBS

Contractor:	SBX Corridor - Griffith/Comet VMF – USS Cal Builders
Contractor Contract No.:	IPMO11-5
Project Manager:	Roger Hatton, P.E. (Corridor) Anni Larkins, P.E. (VMF)
Omnitrans Construction Manager:	Andres Ramirez



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I. PROJECT STATUS SUMMARY

A. Project Description – sbX Corridor

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

The Refined LPA includes:

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

B. Summary Status Update (Accomplishments) – sbX Corridor

- SBX Revenue Start Date commenced on April 29, 2014.
- Punch List items 95% completed.
- Continued completion of remaining change order work.
- Completed Level 2-4 testing/certification.

C. June Work – sbX Corridor

- Complete remaining 5% of Punch List corrections.
- Complete final punch walk.
- Complete As-Built turnover.
- Complete turnover of stations and corridor.
- Complete project document turnover.

D. Project Description – Vehicle Maintenance Facility (VMF)

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

E. Summary Status Update (Accomplishments) – Vehicle Maintenance Facility (VMF)

- Completed installation and testing for the new water line to the facility.
- Completed bus-lift equipment installation in Maintenance Building A, and started exhaust reel installation.
- Completed installation of underground electrical to Building B and excavation for sewer ejection pit; underground plumbing is ongoing.
- Started the shaft construction and the sheetrock installation in the new battery room.
- Completed the Punch List work for the thirty-yard trash compactor. The compactor has been operational and in use by the Agency since January 2014.

F. June Work – Vehicle Maintenance Facility (VMF)

- Start cutting the roof penetrations in Maintenance Building A.
- Place concrete for the footings and inspection pits at the new Bus Wash Facility, Building B, and to complete construction of the sewer ejection pit and reclamation pits.
- Complete construction on the new buffer tank pad, start the relocation of the buffer tanks, and start demolition for the new Fuel Facility (Building C).
- Proceed with installation of the new sewer line.
- Install the two new compressors.
- Continue work at the new battery room for completion by end of June 2014.

II. PROJECT SCHEDULE

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

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

Summary of Project Schedule – Vehicle Maintenance Facility (VMF)

Proactive and collective efforts by the Agency and Contractor continue in the submission and review of the monthly schedule updates through February 2014. The Contractor's latest monthly schedule update is for March 2014 (UP08), with a data date of March 16, 2014, submitted on May 20, 2014. The schedule update shows the project behind schedule, with approximately (+/-) 342-calendar days of negative float projecting a Substantial and Final Completion dates of November 17, 2014 and January 15, 2015, respectively. The submittal is under evaluation and a response planned for May 27, 2014.

The March 2014 monthly schedule update includes the contaminated soil shutdown that occurred from January 31, 2014 through March 19, 2014. A small pocket of soil with a distinct odor was encountered on January 31, 2014. After testing of the soil no contaminants were encountered and the grading was allowed to continue. However, this process had impact to the project, and based on internal assessments, the project currently forecasted to complete in January 2015, reflected in the Contractor's latest schedule. Per the Agency's and Contractor's meeting at the upper management level on April 16, 2014, collective actualization of the project schedule continues with the goal to have all schedule updates submitted and reviewed through May 2014 by the end of May/mid-June 2014. This will allow the Agency and Contractor to assess impacts to date, and manage the remaining work as a partnering and collective effort.

The Contractor has yet to submit its response to the Agency findings on Time Impact Evaluation (TIE No. 1) submitted on October 28, 2013. The Agency issued a letter on January 29, 2014 granting an extension of 108-calendar days: 55-CD deemed concurrent (Excusable & Non-Compensable) and 53-CD deemed (Excusable & Compensable), resulting in revised Substantial and Final Completion dates of March 27, 2014 and May 26, 2014, respectively.

The contract documents require that the Contractor submit a claim for any time extension requested. The Contractor submitted its formal Claim on May 21, 2014 for processing. The Contractor's claim documentation is under review by the Agency, for compliance with the Contract requirements to Claims.

As noted in previous monthly reports, subsequent to the Agency's issuance of the TIE No. 1 findings, the Contractor submitted its notification of suspension of work on January 31, 2014, and did not work much in February 2014. Although the contaminated soil issue was discovered on January 31, 2014, this only affected earthwork activities, but had no impact to the work that remained outstanding at the compressor room, the new battery room and in maintenance Building A. However, any impacts have yet to be submitted or substantiated by the Contractor, by submission of a TIE. Work is progressing and unresolved items are continuing to be elevated for resolution through the Dispute Resolution Ladder.

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

A. sbX Corridor

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

Total RFIs – 1011
Total Open – 0

Total Submittals – 891
Total Open – 0

Total NCRs - 26
Total Open - 0

B. Vehicle Maintenance Facility (VMF)

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

Total RFIs – 195
Total Open – 0

Total Submittals – 358
Total Open – 5

Total NCRs – 14
Total Open – 2

IV. SAFETY

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

SbX Corridor - As of May 22, 2014 there are 424,441 “no-lost time” hours.

VMF - As of May 16, 2014 there are 22,291 “no-lost time” hours.

V. PROJECT BUDGET AND COST

TOTAL PROGRAM BUDGET
BUDGET AS OF APRIL 30, 2014

Approved Budget	\$191,706,000
Cost to Date	\$158,097,288
Estimate to Complete	\$ 29,701,628
Estimate at Completion	\$187,798,916

SBX CORRIDOR PROJECT COSTS - AS OF APRIL 30, 2014

	CURRENT AUTHORIZED	CURRENT INVOICES PAID	REMAINING CONTRACT BALANCE
JACOBS	\$11,852,647	\$10,183,990	\$1,668,657
PARSONS	\$18,097,876	\$16,920,294	\$1,177,582
GRIFFITH/COMET	\$83,782,780	\$76,771,882	\$7,010,898
TOTAL	\$113,733,303	\$103,876,166	\$9,857,137

VMF CORRIDOR PROJECT COSTS - AS OF APRIL 30, 2014

	CURRENT AUTHORIZED	CURRENT INVOICES PAID	REMAINING CONTRACT BALANCE
STV Inc.	\$1,418,132	\$1,266,342	\$151,790
USS Cal Builders	\$11,685,598	\$5,601,908	\$6,083,690
Total	\$13,103,730	\$6,868,250	\$6,235,480

SBX CORRIDOR CONTRACT TIME

Activity	Days	Date
Notice to Proceed		11/21/11
Calendar Days per Original Contract	730	
Original Completion Date		12/21/13
Calendar Days Completed as of April 25, 2014	884	
CCO Time Extension to Date	0	
Required Completion Days/Date as of April 25, 2014	-154	12/21/13
Forecasted Completion Date as of April 25, 2014		06/30/14
Percent Time Elapsed	121%	

VMF CONTRACT TIME

Activity	Days	Date
Notice to Proceed		12/10/12
Calendar Days per Original Contract	425	
Original Completion Date		02/08/14
Calendar Days Completed as of April 25, 2014	529	
CCO Time Extension to Date	0	
Required Completion Days/Date as of April 25, 2014	-105	02/08/14
Forecasted Revenue Start Date as April 25, 2014		04/28/14
Percent Time Elapsed	124%	

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

CHANGE ORDERS**SBX CORRIDOR CONTRACT CHANGE ORDERS - As of April 25, 2014**

Change Order Status	Amount Approved
Approved Change Orders	\$18,962,326.34
Pending Change Orders	\$1,958,845.20
Potential Change Orders	\$666,358.36
Total	\$21,587,529.90

VMF CONTRACT CHANGE ORDERS - As of April 25, 2014

Change Order Status	Amount
Approved Change Orders	\$1,621,448.60
Pending Change Orders	\$217,820.22
Potential Change Orders	\$1,227,343.40
Total	\$3,007,647.32

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

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

VI. Project Photographs

VMF PROGRESS PHOTOS



1. Setting forms for footings at new bus wash facility (Building B)



2. Placing underground plumbing drain lines at new bus wash facility (Building B)



3. New platform bus lifts installed in Maintenance Facility (Building A)



4. New platform bus lifts installed in Maintenance Facility (Building A)

IPMO/sbX Project Cost Report
Period Ended 4/30/14

Description	Current Budget	Expenditures \$	%	Remaining Budget	Estimate to Complete	Estimate at Completion	Budget Forecast Variance
BRT Construction	84,637,000	76,888,283	90.8%	7,748,717	10,124,457	87,012,740	(2,375,740)
Vehicle Maintenance Facility (VMF) Construction	8,131,000	5,601,908		2,529,092	10,007,944	15,609,852	(7,478,852)
Vehicles - Design & Manufacturing	16,628,000	14,890,755	89.6%	1,737,245	1,274,960	16,165,715	462,285
ROW Acquisition Services	10,357,000	10,937,789	105.6%	(580,789)	952,181	11,889,970	(1,532,970)
3rd Party Utilities Design & Relocation	1,003,000	1,074,398	107.1%	(71,398)	31,719	1,106,117	(103,117)
BRT Design	17,849,400	16,920,294	94.8%	929,106	330,788	17,251,082	598,318
VMF Design	1,007,600	1,280,742	127.1%	(273,142)	415,190	1,695,932	(688,332)
Other Professional, Technical & Management Services	34,020,000	30,503,119	89.7%	3,516,881	6,564,389	37,067,508	(3,047,508)
SUB-TOTAL	173,633,000	158,097,288		15,535,712	29,701,628	187,798,916	(14,165,916)
Unallocated Contingency	18,073,000	-		18,073,000	3,907,084	3,907,084	14,165,916
TOTAL	191,706,000	158,097,288	82.5%	33,608,712	33,608,712	191,706,000	-

**IPMO/sbX Project
Through 4/30/14**

Standard Cost Category (SCC)	Description	Approved Current Budget	Expenditures \$ %	Remaining Budget	Estimate to Complete	Estimate at Completion	Budget Forecast Variance
10	GUIDEWAY & TRACK ELEMENTS	19,725,000	17,120,394 86.8%	\$ 2,604,606	\$ 2,744,371	\$ 19,864,765	\$ (139,765)
10.02	Guideway: At-grade semi-exclusive (allows cross-traffic)	\$ 18,353,000	15,193,514 82.8%	\$ 3,159,486	\$ 2,407,778	\$ 17,601,292	\$ 751,708
10.03	Guideway: At-grade in mixed traffic	\$ 1,372,000	1,926,880 140.4%	\$ (554,880)	\$ 336,593	\$ 2,263,473	\$ (891,473)
20	STATIONS, STOPS, TERMINALS, INTERMODAL	14,917,000	14,086,309 94.4%	\$ 830,691	\$ 289,828	\$ 14,376,137	\$ 540,863
20.01	At-grade station, stop, shelter, mall, terminal, platform	14,917,000	14,086,309 94.4%	\$ 830,691	\$ 289,828	\$ 14,376,137	\$ -
30	SUPPORT FACILITIES: YARDS, SHOPS, ADMIN. BLDGS	\$ 8,131,000	5,601,909 68.9%	\$ 2,529,091	\$ 10,007,943	\$ 15,609,852	\$ (7,478,852)
30.02	Light Maintenance Facility	\$ 4,265,000	4,352,683 102.1%	\$ (87,683)	\$ 7,666,903	\$ 12,019,586	\$ (7,754,586)
30.05	Yard and Yard Track	\$ 3,866,000	1,249,226 0.0%	\$ 2,616,774	\$ 2,341,040	\$ 3,590,266	\$ 275,734
40	SITEWORK & SPECIAL CONDITIONS	34,271,000	26,853,764 78.4%	\$ 7,417,236	\$ 4,583,595	\$ 31,437,359	\$ 2,833,641
40.01	Demolition, Clearing, Earthwork	\$ 4,741,000	440,613 9.3%	\$ 4,300,387	\$ (350,603)	\$ 90,010	\$ 4,650,990
40.02	Site Utilities, Utility Relocation	\$ 4,993,000	9,728,185 194.8%	\$ (4,735,185)	\$ 1,854,969	\$ 11,583,154	\$ (6,590,154)
40.05	Site structures including retaining walls, sound walls	\$ 90,000	448,344 498.2%	\$ (358,344)	\$ 195,522	\$ 643,866	\$ (553,866)
40.06	Pedestrian / bike access and accommodation, landscaping	\$ 6,925,000	3,822,448 55.2%	\$ 3,102,552	\$ 1,475,965	\$ 5,298,413	\$ 1,626,587
40.07	Automobile, bus, van accessways including roads, parking lots	\$ 3,601,000	4,132,352 114.8%	\$ (531,352)	\$ 133,355	\$ 4,265,707	\$ (664,707)
40.08	Temporary Facilities and other indirect costs during construction	\$ 13,921,000	8,281,822 59.5%	\$ 5,639,178	\$ 1,274,387	\$ 9,556,209	\$ 4,364,791
50	SYSTEMS	\$ 16,727,000	19,902,213 119.0%	\$ (3,175,213)	\$ 584,151	\$ 20,486,364	\$ (3,759,364)
50.02	Traffic signals and crossing protection	\$ 10,810,000	6,586,083 60.9%	\$ 4,223,917	\$ (127,986)	\$ 6,458,097	\$ 4,351,903
50.05	Communications	\$ 4,210,000	8,325,528 197.8%	\$ (4,115,528)	\$ 102,739	\$ 8,428,267	\$ (4,218,267)
50.06	Fare collection system and equipment	\$ 1,707,000	4,990,602 292.4%	\$ (3,283,602)	\$ 609,398	\$ 5,600,000	\$ (3,893,000)
	Pending Change Orders				\$ 2,592,376	\$ 2,592,376	\$ (2,592,376)
	Risk				\$ (638,144)	\$ (638,144)	\$ 638,144
	Construction Subtotal (10-50)	93,771,000	83,564,589 89.1%	\$ 10,206,411	\$ 20,164,120	\$ 103,728,709	\$ (9,957,709)
60	ROW, LAND, EXISTING IMPROVEMENTS	\$ 6,532,000	\$ 6,006,388 92.0%	\$ 525,612	\$ 944,447	\$ 6,950,835	\$ (418,835)
60.01	Purchase or lease of real estate	\$ 6,327,000	5,841,458 92.3%	\$ 485,542	\$ 904,377	\$ 6,745,835	\$ (418,835)
60.02	Relocation of existing households and businesses	\$ 205,000	164,930 80.5%	\$ 40,070	\$ 40,070	\$ 205,000	\$ -
70	VEHICLES	\$ 16,628,000	\$ 14,890,755 89.6%	\$ 1,737,245	\$ 1,274,960	\$ 16,165,715	\$ 462,285
70.04	Bus	\$ 15,448,000	14,858,641 96.2%	\$ 589,359	\$ 400,026	\$ 15,258,667	\$ 189,333
70.06	Non-revenue vehicles	\$ 250,000	- 0.0%	\$ 250,000	\$ -	\$ -	\$ 250,000
70.07	Spare parts	\$ 930,000	32,114 3.5%	\$ 897,886	\$ 874,934	\$ 907,048	\$ 22,952
80	PROFESSIONAL SERVICES	56,702,000	53,635,556 94.6%	\$ 3,066,444	\$ 7,318,101	\$ 60,953,657	\$ (4,251,657)
80.01	Preliminary Engineering	\$ 12,921,000	12,876,525 99.7%	\$ 44,475	\$ 17,502	\$ 12,894,027	\$ 26,973
80.02	Final Design	\$ 7,261,000	7,106,035 97.9%	\$ 154,965	\$ 736,087	\$ 7,842,122	\$ (581,122)
80.03	Project Management for Design and Construction	\$ 15,997,000	11,949,434 74.7%	\$ 4,047,566	\$ 2,501,869	\$ 14,451,303	\$ 1,545,697
80.04	Construction Administration & Management	\$ 6,632,000	10,183,990 153.6%	\$ (3,551,990)	\$ 2,668,657	\$ 12,852,647	\$ (6,220,647)
80.05	Professional Liability and other Non-Construction Insurance	\$ 1,112,000	- 0.0%	\$ 1,112,000	\$ -	\$ -	\$ 1,112,000
80.06	Legal; Permits; Review Fees by other agencies, cities, etc.	\$ 10,596,000	11,519,572 108.7%	\$ (923,572)	\$ 668,986	\$ 12,188,558	\$ (1,592,558)
80.07	Surveys, Testing, Investigation, Inspection	\$ 1,463,000	- 0.0%	\$ 1,463,000	\$ 25,000	\$ 1,438,000	\$ 1,438,000
80.08	Start up	\$ 720,000	- 0.0%	\$ 720,000	\$ 700,000	\$ 700,000	\$ 20,000
	Subtotal (10-80)	\$ 173,633,000	\$ 158,097,288 91.1%	\$ 15,535,712	\$ 29,701,628	\$ 187,798,916	\$ (14,165,916)
90	UNALLOCATED CONTINGENCY	18,073,000	- 0.0%	\$ 18,073,000	\$ 3,907,084	\$ 3,907,084	\$ 14,165,916
	Subtotal (10-90)	191,706,000	158,097,288 82.5%	\$ 33,608,712	\$ 33,608,712	\$ 191,706,000	\$ -
100	FINANCE CHARGES	-	-	\$ -	\$ -	\$ -	\$ -
	TOTAL PROJECT COST (10-100)	191,706,000	158,097,288 82.5%	\$ 33,608,712	\$ 33,608,712	\$ 191,706,000	\$ -

ITEM # E5

DATE: July 2, 2014

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

THROUGH: P. Scott Graham, CEO/General Manager

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

**SUBJECT: PASS-THROUGH FUNDING AGREEMENT – CHINO TRANSIT CENTER
PHASE II**

FORM MOTION

Authorize the CEO/General Manager to execute an agreement to pass through funding in an amount not to exceed \$188,905 to the City of Chino for the development and construction of Phase II improvements at the Chino Transit Center.

This item was reviewed by the Administrative and Finance Committee at its June 12, 2014, meeting and recommended to the Board of Directors for approval. Omnitrans legal counsel has reviewed and approved this agreement.

BACKGROUND

Phase I of the Chino Transit Center was completed in 2005 through a partnership between Omnitrans and the City of Chino. The Transit Center consists of seven bus bays with shelters, benches, lighting, a central fountain, and landscaping.

Phase II will consist of pedestrian and safety improvements that are needed at the Transit Center. Phase II will involve the following scope of work:

- Crosswalk improvements on 6th Street at Chino Avenue;
- Asphalt overlay and restriping of two public park-and-ride lots;
- Installation of lighting and curb for safety in public park-and-ride lot at the southwest corner of 6th Street and “D” Street; and
- Installation of wayfinding signage throughout transit center site.

The City of Chino will take the lead on design and construction of the project. Omnitrans will pass through the funding and will participate in the project development process as needed.

FUNDING SOURCE

The costs associated with this project are budgeted from capital funds and will have no impact on Omnitrans' budget. The federal portion of funding is the remainder of unused FTA 5309 congressional earmark funding from 2004 for the Chino Transit Center, which cannot be used for any other project. Omnitrans is providing the required local match funding from STA funds allocated for this project.

Of the total \$195,082 of funding, Omnitrans will receive \$6,177 for administrative charges. A total amount not to exceed \$188,905 will be passed through to the City for the project.

Fund Source	Grant Number	Account	Description	Total Funding	Omnitrans Administration	Pass-Through to City of Chino
FTA 5309	CA-03-0660	C0430101F	Chino Transit Center	\$150,898	\$4,778	\$146,120
STA	12-09-OMN-B	L0530301S	Chino Transit Center	\$44,184	\$1,399	\$42,785
Total				\$195,082	\$6,177	\$188,905

_____ Verification of funding source and availability of funds
(Verified and initialed by Finance)

CONCLUSION

Staff recommends that the Omnitrans Board of Directors authorize the CEO/General Manager to execute an agreement to pass through funding in an amount not to exceed \$188,905 to the City of Chino for the development and construction of Phase II improvements at the Chino Transit Center.

PSG:AR

Attachment

CHINO TRANSIT CENTER PHASE II
PASS-THROUGH FUNDING AGREEMENT AND COOPERATIVE AGREEMENT

This AGREEMENT, entered into on _____, is between the
CITY OF CHINO, a MUNICIPAL CORPORATION OF THE STATE OF
CALIFORNIA, referred to herein as "CITY"

THE CITY OF CHINO

13220 Central Avenue

Chino, CA 91710

DUNS# 015107340

AND

OMNITRANS, a joint powers public transit agency, referred to herein as
"OMNITRANS."

OMNITRANS

1700 W. Fifth Street

San Bernardino, CA 92411-2499

CITY and OMNITRANS are sometimes referred to herein individually as "Party", and
collectively, as the "Parties".

RECITALS

1. OMNITRANS and CITY mutually desire to cooperate and participate in the design, development, and construction of the Chino Transit Center Phase II, referred to herein as “PROJECT” and located in the City of Chino, bounded generally by Fifth Street, Central Avenue, “D” Street, and Chino Avenue (see Exhibit “A”).
2. The PROJECT may consist of any of the following improvements contingent upon available funding:
 - a. Crosswalk improvements on 6th Street at Chino Avenue;
 - b. Asphalt overlay and restriping of two public park-and-ride lots;
 - c. Installation of lighting and curb for safety in public park-and-ride lot at the southwest corner of 6th Street and “D” Street; and
 - d. Installation of wayfinding signage throughout transit center site.
3. OMNITRANS and CITY desire to specify herein the terms and conditions, under which the PROJECT shall be funded, designed, constructed, and maintained.

SECTION I

OMNITRANS AGREES:

1. To pass through an amount not to exceed \$188,905 of Funding to the CITY for completion of the PROJECT (“Maximum Funding Obligation”).
2. The total of \$188,905 of funding will come from the following sources (“Funding”):
 - a. Up to \$146,120 in FTA 5309 discretionary funds (grant # CA-03-0660, CFDA # 20.500);
 - b. Up to \$42,785 in local match funding. (City of Chino has no direct funding for the project.)
3. To attend pertinent meetings scheduled by the CITY and/or its CONTRACTORS regarding the PROJECT.
4. To review preliminary and final PROJECT plans and provide timely input and review of all documents submitted to OMNITRANS by CITY and/or its CONTRACTORS.

5. To submit all required documentation to Funding agencies and facilitate the processing of all Funding reimbursements or disbursements.
6. If CITY submits an invoice to OMNITRANS on or before the 15th day of each month, OMNITRANS will remit payment in the first full week of the following month, up to the Maximum Funding Obligation. If CITY submits an invoice to OMNITRANS on or after the 16th day of each month, OMNITRANS will remit payment in the first full week of the second month after the invoice is submitted, up to the Maximum Funding Obligation. OMNITRANS shall not unreasonably withhold payment and shall promptly pay any undisputed amounts in compliance with the regulations and terms of the grant agreements governing the Funding sources, and in accordance with the terms of this Agreement. Should OMNITRANS dispute any portion of an invoice, it must deliver written notice within five (5) working days of receipt of the invoice. The notice must reasonably describe the amount to be withheld and the reason(s) therefor; provided, however, that OMNITRANS shall not be entitled to dispute the amount of a condemnation award approved by OMNITRANS in advance or any item previously approved by OMNITRANS. Failure of OMNITRANS to deliver timely notice of a disputed reimbursement or payment request as required in this section shall be deemed its approval of such payment or reimbursement request, unless such requested reimbursement is for costs that are ineligible for Funding.
7. In the event that the Federal Transit Administration (FTA) advises OMNITRANS that any requested disbursement of federal funds would constitute a violation of the terms of either the Funding grant for the federal funds or of applicable federal, state or local laws or regulations, OMNITRANS shall notify the CITY within five (5) working days in writing ("Violation Notice"). If the PROJECT costs incurred by CITY prior to the receipt of the Violation Notice cannot ultimately be paid out of the applicable federal fund, CITY and OMNITRANS agree to seek in good faith, a timely and equitable cost sharing of the costs not reimbursed by FTA, provided that such costs are in accordance with the terms of this Agreement. If costs are not incurred in accordance with the terms of this Agreement, CITY shall be solely liable for such costs without reimbursement from OMNITRANS.
8. OMNITRANS will conduct annual site visits with CITY in each fiscal year in which PROJECT activity occurs. The site visit will include a spot check of compliance with FTA regulations.

SECTION II

CITY AGREES:

1. To act as lead agency (as a subrecipient of federal funding) in the design, development, and construction of the PROJECT, and to be responsible for compliance with all local, state and federal laws, rules, and regulations related to PROJECT, including the California Environmental Quality Act.
2. To provide adequate inspection of all work performed for PROJECT and maintain adequate records of inspection and materials testing for PROJECT.
3. To attend pertinent meetings scheduled by the CITY'S CONTRACTORS and/or OMNITRANS regarding the development of the PROJECT.
4. To provide all applicable permits required by CITY at no cost to the PROJECT.
5. To provide project management and related administrative support required during development of the PROJECT.
6. To adhere to the PROJECT milestones and PROJECT budget set forth in Exhibits "B" and "C" to this Agreement.
7. To claim full ownership of the PROJECT.
8. To maintain and upkeep all portions of the completed PROJECT.
9. To maintain, and operate safety lighting/street lighting installed as part of the PROJECT at City's sole expense.
10. To protect the Federal investment in the project by maintaining the City of Chino Transit Center's intended transit use.
11. To provide construction management and related administrative support required during the design phase, bid phase, and construction phase of the PROJECT.
12. To provide to OMNITRANS copies of all official project documents, including Requests for Proposals or Invitations for Bids, contract documents, notices to proceed issued to contractors, final project plans, closeout documents, etc..

13. To comply with all requirements related to the Funding, including the state and federal funding, and Federal Transit Administration's (FTA) procurement guidelines for all services related to the PROJECT. In addition to and notwithstanding any other of CITY's obligations under this Agreement, CITY agrees that it will be responsible for reasonable damages and expenses, including fines or penalties imposed by the FTA or any other Funding sources, reimbursement of funds, remedies of violations and any attorney's fees which OMNITRANS suffers by CITY's willful and material breach of any such funding requirements referred to in this Section.
14. To provide to OMNITRANS all information needed for submitting quarterly reports that document the status of the PROJECT's progress, including task completion status, budget status, and adherence to PROJECT milestones (see Exhibit "B" and "C").
15. To submit a monthly, itemized invoice to OMNITRANS on or before the 15th day of the month that contains supporting documentation detailing all costs, fees, and other charges that the CITY incurred related to the PROJECT. The invoice shall describe the amount of services and supplies provided (including such detail as hourly billing rates per employee for all CONTRACTORS, labor hours per task per employee, work performed, and milestones met since the initial commencement date, or since the start of the billing period, as appropriate, through the date of the current statement. The invoice shall include copies of checks issued by CITY and copies of invoices paid by CITY.
16. CITY shall comply with all requirements of the FTA 2012 Master Agreement, found at <http://www.fta.dot.gov/documents/19-Master.pdf>, with the FTA requirements in Exhibit "D", and with FTA Circular 4220.1F, the provisions of which are incorporated herein by reference. CITY shall incorporate all applicable federal requirements into its contracts with its CONTRACTORS, as required under the Master Agreement, the attached Exhibit "D" and FTA Circular 4220.1F.
17. To submit to OMNITRANS, annually upon request, a copy of CITY's annual single audit report that includes the federal funds used for the PROJECT. If not required, the CITY will submit to OMNITRANS a letter stating such.
18. To submit to OMNITRANS, annually upon request, a signed Self-Certification form that certifies CITY's and CONTRACTOR's compliance with all pertinent FTA regulations.

19. CITY shall keep and maintain all books, papers, records, and accounting records (collectively referred to herein as “records”) including: records of all costs allocated to the PROJECT, files, accounts, reports, single audits, cost proposals with backup data, and all other material relating to the PROJECT. CITY shall, upon request, make all such materials available to OMNITRANS or its designee at any reasonable time during the term of the Agreement and for three (3) years from the date of final payment to CITY, for auditing, inspection, and copying. CITY shall include the provisions of this paragraph in all of its contracts resulting from this Agreement or shall take other steps to ensure the availability of such records for the required time.
20. For any equipment or material purchased as a result of this Agreement or to be funded hereunder, the CITY shall comply, and shall require its CONTRACTORS to comply, with 49 U.S.C. §5323(j) and FTA regulations, “Buy America Requirements,” 49 C.F.R. Part 661, and any amendments thereto.
21. CITY shall require and ensure that its CONTRACTORS will obtain and maintain insurance of the types and in the amounts described below and satisfactory to OMNITRANS, and that its CONTRACTORS shall indemnify and defend OMNITRANS as further set forth below.
 - A. Commercial General Liability Insurance. City’s CONTRACTORS shall maintain occurrence version commercial general liability insurance or equivalent form with a combined single limit of not less than \$2,000,000 per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two times the occurrence limit. Such insurance shall:
 - (1) Name CITY, OMNITRANS and their officials, officers, employees, agents, and consultants, as additional insureds with respect to performance of this Agreement and/or the PROJECT. Such insured status shall contain no special limitations on the scope of its protection to the above-listed insured.
 - (2) Together be primary and non-contributory with respect to any insurance or self-insurance programs covering OMNITRANS, the CITY or their officials, officers, employees, agents, and consultants.
 - (3) Contain standard separation of insured's provisions.
 - B. Business Automobile Liability Insurance. CITY’s CONTRACTORS shall maintain comprehensive automobile liability insurance with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall include coverage for owned, hired, and non-owned automobiles.

- C. Public and Property Damage Liability Insurance. CITY's CONTRACTORS shall maintain a public and property damage liability insurance policy of not less than \$1,000,000 combined single limits liability coverage for bodily injury and/or property damage.
- D. Workers' Compensation Insurance. CITY's CONTRACTORS shall maintain workers' compensation insurance with statutory limits and employers' liability insurance with limits of not less than \$1,000,000 per accident.
- E. Errors and Omissions. CITY's CONTRACTORS shall maintain errors and omissions insurance with a \$1,000,000 combined single limit bodily and property damage liability per occurrence and \$3,000,000 in the aggregate, if available for the work the CONTRACTOR will be performing.
- F. Professional Liability. CITY's CONTRACTORS shall maintain professional liability insurance with a limit of at least \$1,000,000 per occurrence, if available for the work the CONTRACTOR will be performing.
- G. Certificates/Insurer Rating/Cancellation Notice.
- (1) CITY shall require, prior to commencement of the PROJECT, that CONTRACTORS furnish properly executed certificates of insurance, and certified copies of endorsements, and policies, which shall clearly evidence all insurance required in this Section II.17. CITY shall require that the contract with CITY's CONTRACTORS include thirty (30) days prior written notification to CITY and OMNITRANS of pending insurance cancellation, expiration, or material reduction.
 - (2) City's CONTRACTORS shall maintain such insurance from the time the Agreement commences until the PROJECT is completed, except as may be otherwise required by this Section or provided in the CITY's or CONTRACTORS' policies.
 - (3) CITY's CONTRACTORS shall place insurance with insurers having an A.M. Best Company rating of no less than A:VII and licensed to do business in California.
- H. CITY's CONTRACTORS shall replace certificates, policies, and endorsements for any insurance expiring prior to completion of the PROJECT.
- I. CONTRACTOR/CONSULTANT Indemnity.

- (1) CITY shall require, under its contracts with its CONTRACTORS, that its CONTRACTORS shall indemnify, defend and hold harmless CITY and OMNITRANS, and their respective officers and employees, from all claims, suits, or actions of every name, kind, and description brought for or on account of injury occurring by reason of anything done or omitted to be done by CONTRACTORS in connection with the PROJECT.

SECTION III

IT IS MUTUALLY AGREED:

1. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
2. Upon completion of all work under this Agreement, ownership and title to materials, equipment, structures, and appurtenances which are installed within the CITY's property shall automatically be vested in the CITY.
3. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement.
4. Neither CITY nor any officer /employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by OMNITRANS under or in connection with any work, authority or jurisdiction delegated to OMNITRANS under this Agreement. It is understood and agreed that OMNITRANS shall fully defend, indemnify, and save harmless CITY, all officers and employees from all claims, suits, or actions of every name, kind, and description brought for or on account of injury occurring by reason of anything done or omitted to be done by OMNITRANS under or in connection with any work, authority, or jurisdiction delegated to OMNITRANS under this Agreement.
5. Neither OMNITRANS nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority, or jurisdiction delegated to CITY under this Agreement. It is understood and agreed that, CITY shall fully defend, indemnify, and save harmless OMNITRANS, all officers and employees from all claims, suits, or actions of every name, kind, and description brought for or on account of injury occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority, or jurisdiction delegated to CITY under this Agreement.
6. All correspondence is to be sent to the following address:

OMNITRANS

City of Chino

Attn: Anna Rahtz

Attn: Jose Alire

Acting Director of Planning & Development Services

Assistant City Manager

1700 W. Fifth Street

13220 Central Avenue

San Bernardino, CA 92411-2499

Chino, CA 91710

7. OMNITRANS shall designate a Project Manager to represent OMNITRANS and CITY shall designate a Project Manager to represent CITY through whom all communications between the two agencies shall be channeled.
8. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof, and there are no other representations, promises, warranties, covenants or undertakings with respect thereto.
9. If any term, provision, covenant, or condition of this Agreement is held to be invalid, void, or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
10. No waiver of any default shall constitute a waiver of any other default whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
11. Either Party to this Agreement may declare a default hereunder by serving written notice describing the nature of the breach to the other Party. The Party alleged to have breached the Agreement shall be afforded thirty (30) days from service of the notice of default to take whatever steps necessary to cure the breach. If the breach is not cured within the time parameters set forth herein, this Agreement may be terminated for cause upon written notice of termination to the defaulting Party. Termination shall be effective as of the date set forth in the notice of termination. Upon termination, OMNITRANS shall pay to CITY all approved costs incurred by CITY up to the date of termination, provided that if termination is as a result of CITY's default, OMNITRANS may withhold costs incurred by OMNITRANS as a result of such default.

12. This Agreement shall terminate upon completion of PROJECT, except that the indemnification provisions shall remain in effect until terminated or modified, in writing, by mutual agreement. Should any claims arising out of PROJECT be asserted against one of the Parties, the Parties agree to extend the fixed termination date of this Agreement, until such time as the claims are settled, dismissed or paid.
13. Neither this Agreement, nor any of the Parties' rights, obligations, duties, or authority hereunder may be assigned in whole or in part by either Party without the prior written consent of the other Party in its sole, and absolute, discretion. Any such attempt of assignment shall be deemed void and of no force and effect.
14. The recitals set forth above are true and correct and are incorporated by reference as though fully set forth herein.
15. The exhibits attached to this Agreement are incorporated herein by reference.
16. General Interpretation.
 - A. As used in this Agreement, unless otherwise specified, the terms "shall" and "will" shall have the same meaning.
 - B. As used in this Agreement, unless otherwise specified, "CONTRACTOR" or "CONTRACTORS" shall mean any third party hired by CITY to perform work in relation to the PROJECT.

[Signatures on following page]

In witness thereof, the parties have caused this Agreement to be executed by their respective officers.

OMNITRANS

CITY

Approved as to content:

Approved as to content:

By: _____

By: _____

P. Scott Graham
CEO/General Manager

Matthew C. Ballantyne
City Manager

Date: _____

Date: _____

Approved as to form:

Attest:

By: _____

Angela Robles

Omnitrans Legal Counsel

City Clerk

Date: _____

Date: _____

Approved as to form:

By: _____

City Attorney

Date: _____

EXHIBIT A: PROJECT LOCATION DIAGRAM

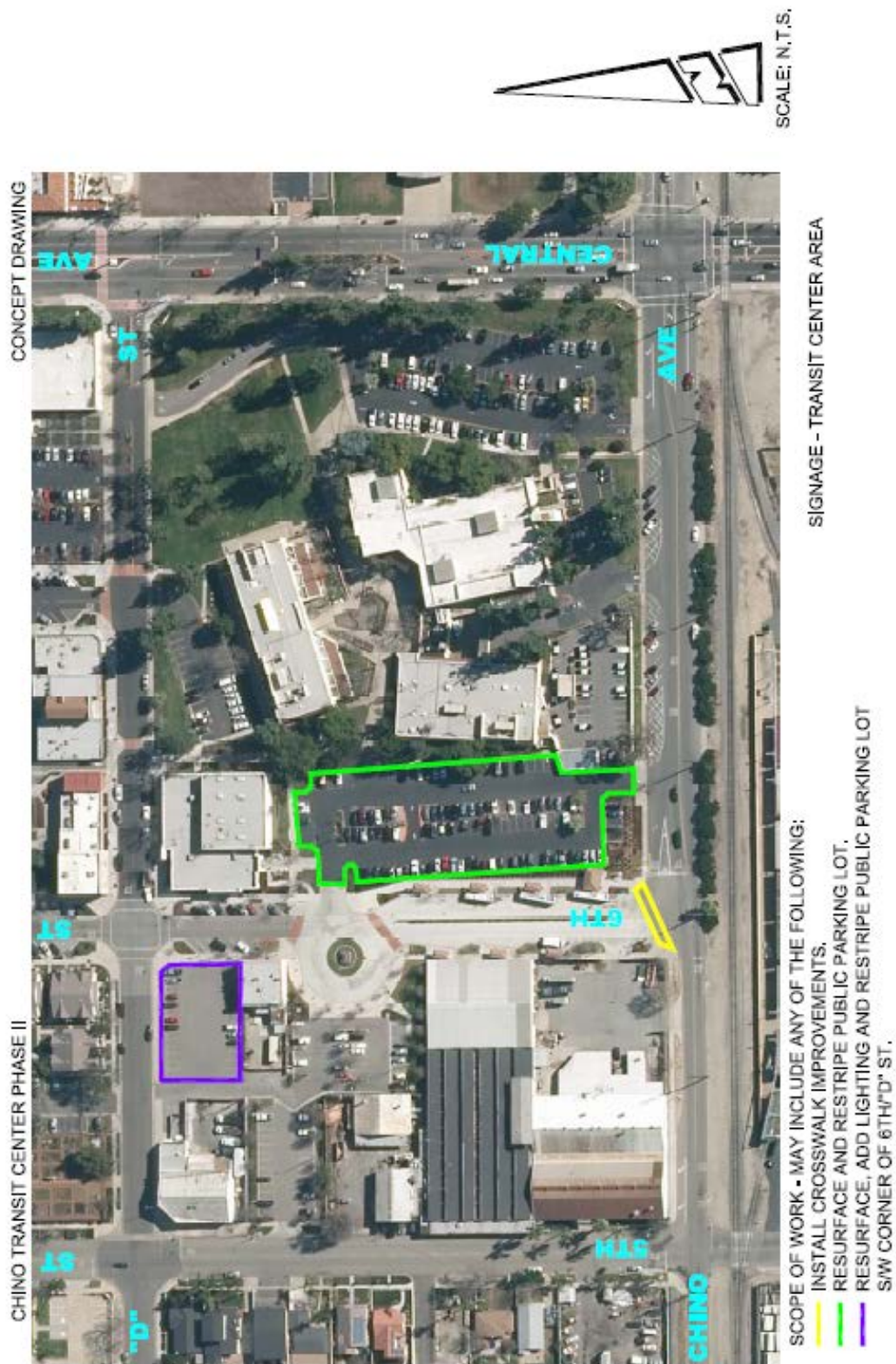


EXHIBIT B: PROJECT MILESTONES SCHEDULE

Milestone	Completion Date
Preparation of conceptual site plan.	
Review period by OMNITRANS/CITY.	
Agencies to select "preferred design and site" collectively.	
Final design consultant to be selected jointly.	
Final design completed.	
Review period by OMNITRANS/CITY (simultaneous review by both agencies each review to take no more than two (2) weeks, after that, deemed approved by that agency).	
Final design complete.	
Award Construction Contract	
Start Construction.	
Complete Construction	

To be refined and completed by CITY upon start of PROJECT.

EXHIBIT C: PROJECT BUDGET

Project Component	Cost
City's project management/administration	
Design, environmental clearance, and design services during construction	
Construction management	
Construction	
Contingency	

To be completed by CITY upon start of PROJECT and to be refined as design is developed.

EXHIBIT D: FEDERAL REQUIREMENTS

OMNITRANS will be funding this Agreement with federal funds from the Federal Transit Authority (“FTA”). The provision of such funds requires incorporation of the following contract terms in this Agreement, and the construction and related agreements for the PROJECT to be completed under this Agreement, as further set forth below. The references below to “Contractor” shall mean and refer to CITY and its CONTRACTORS for the PROJECT covered under this Agreement.

1. OPEN MARKET PROCUREMENT REQUIREMENTS

a. Competition.

All CITY procurement transactions to be funded under this Agreement shall be conducted in a manner that provides full and open competition, and shall be conducted in accordance with applicable state and federal requirements, including the FTA requirements set forth in FTA Circular 4220.1F.

2. BUY AMERICA REQUIREMENTS

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

a. Applicability to Contracts

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

b. Buy America

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver.

General waivers are listed in 49 CFR 661.7. Note: General waivers for small purchases do not apply to Contractor equipment purchases when Contractor’s contract value exceeds \$100,000 in value.

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

3. CARGO PREFERENCE REQUIREMENTS

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

a. Applicability to Contracts

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

b. Flow Down

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

c. Cargo Preference - Use of United States-Flag Vessels The Contractor agrees:

1. To 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 the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
2. To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to Commission (through the Contractor in the case of a subcontractor's bill-of-lading); and
3. To 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.

4. ENERGY CONSERVATION REQUIREMENTS

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

a. Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

b. Flow Down

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

c. Energy Conservation

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

5. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251 et seq.

a. Applicability to Contracts

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

b. Clean Water

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

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

6. LOBBYING

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

a. Applicability to Contracts

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

b. Flow Down

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

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

Contractors who apply or Bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any

other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to Commission.

7. ACCESS TO RECORDS AND REPORTS

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

a. Applicability to Contracts

Reference Chart “Requirements for Access to Records and Reports by Type of Contracts”, Item 6 of this Article.

b. Flow Down

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

c. Access to Records

The following access to records requirements apply to this Contract:

1. The Contractor agrees to provide Commission, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor’s records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where Commission or a sub grantee of Commission in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive Bidding, the Contractor shall make available records related to the contract to Commission, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
3. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
4. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to

maintain same until Commission, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

5. FTA does not require the inclusion of these requirements in subcontracts.
6. Requirements for Access to Records and Reports by Types of Contract:

Contract Characteristics	Construction	Architectural Engineering	Professional Services
Non State	Yes	Yes	Yes
Grantees	Yes	Yes	Yes
a. Contracts below SAT (\$100,000)			
b. Contracts above \$100,000/Capital Projects			

¹ Sources of Authority: 49 CFR 836 (i).

8. FEDERAL CHANGES

49 CFR Part 18

a. Applicability to Contracts

The Federal Changes requirement applies to all contracts.

b. Flow Down

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

c. Federal Changes

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

9. CLEAN AIR

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

a. Applicability to Contracts

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

b. Flow Down

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

c. Clean Air

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et m. . The Contractor agrees to report each violation to Commission and understands and agrees that Commission, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

10. RECYCLED PRODUCTS

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

a. Applicability to Contracts

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

b. Flow Down

These requirements flow down to all contractor and subcontractor tiers.

c. Recovered Materials

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.

11. PREVAILING WAGE CALIFORNIA LABOR CODE AND DAVIS-BACON ACT

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

California Labor Code section 1720, et. seq.

a. Applicability to Contracts

Contractor shall comply with the requirements of the Davis-Bacon Act and California Labor Law, California Labor Code section 1720, et. seq. As between Davis-Bacon and California prevailing wage rates, the higher of the two shall apply.

b. Apprentices and trainees

1. 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 subcontractor's 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.

2. 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.

3. 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.

c. 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.

d. 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.

e. 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.

f. 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.

g. Certification of eligibility

1. 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).
2. 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).
3. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

12. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

a. Applicability to Contracts

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

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

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

b. Flow Down

Applies to third party contractors and subcontractors.

c. Pursuant to Section 102 (Overtime)

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

1. **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$ 10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3. **Withholding for unpaid wages and liquidated damages** - Commission shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally- assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

5. **Payrolls and basic records** - payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

d. Section 107 (OSHA)

1. Contract Work Hours and Safety Standards Act

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

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

apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

13. COPELAND ANTI-KICKBACK ACT

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

a. Applicability to Contracts

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

b. Flow Down

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

c. Compliance with Copeland Act requirements

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

14. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

a. Applicability to Contracts

Applicable to all contracts.

b. Flow Down

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

c. No Obligation by the Federal Government

1. Commission and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to Commission, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

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

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

a. Applicability to Contracts

These requirements are applicable to all contracts.

b. Flow Down

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

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

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et q. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

16. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

49 CFR Part 29; Executive Order 12549

a. Applicability to Contracts

Executive Order 12549, as implemented by 49 CFR Part 29, prohibits Commission from contracting for goods and services from organizations that have been suspended or debarred from receiving Federally-assisted contracts. As part of their applications each year, Commission is required to submit a certification to the effect that they will not enter into contracts over \$100,000 with suspended or debarred contractors and that they will require their contractors (and their subcontractors) to make the same certification to them.

b. Flow Down

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

c. Instructions for Certification

By signing and submitting its Bid or proposal, the prospective lower tier participant is deemed to be providing a signed certification to the following:

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, Commission may pursue available remedies, including suspension and/or debarment.
2. The prospective lower tier participant shall provide immediate written notice to Commission if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
3. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “persons,” “lower tier covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact Commission for assistance in obtaining a copy of those regulations.
4. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by Commission.
5. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -

Lower Tier Covered Transaction”, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.

7. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

8. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, Commission may pursue available remedies including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction

1. The prospective lower tier participant certifies, by submission of this Bid or proposal, that neither it nor its “principals” [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

17. PRIVACY ACT

5 U.S.C. 552

a. Applicability to Contracts

When Commission maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

b. Flow Down

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

c. Contracts Involving Federal Privacy Act Requirements

The following requirements apply to 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.

18. CIVIL RIGHTS REQUIREMENTS

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

a. Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

b. Flow Down

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

c. Civil Rights

The following requirements apply to the underlying contract:

1. **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor

agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

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

A. Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 et m. ., (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

B. Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

C. Access Requirements for Persons with Disabilities. The Recipient agrees to comply with the requirements of 49 U.S.C. § 5301(d), which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The Recipient also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the Recipient agrees to comply with all applicable requirements of the following regulations and any subsequent amendments thereto:

- i. U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. Part 37;
- ii. U.S. DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. Part 27;
- iii. Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- iv. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. Part 35;
- v. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. Part 36;
- vi. U.S. General Services Administration (U.S. GSA) regulations, “Accommodations for the Physically Handicapped,” 41 C.F.R. Subpart 101-19;
- vii. U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630;
- viii. 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;
- ix. FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. Part 609;
- x. Architectural and Transportation Barriers Compliance Board regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. Part 1194; and
- xi. Any implementing requirements FTA may issue.

19. STATE AND LOCAL LAW DISCLAIMER

a. Applicability to Contracts

This disclaimer applies to all contracts.

b. Flow Down

The Disclaimer has unlimited flow down.

20. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1F

a. Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

b. Flow Down

The incorporation of FTA terms has unlimited flow down.

c. Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Commission requests which would cause Commission to be in violation of the FTA terms and conditions.

21. METRIC REQUIREMENTS

15 U.S.C. §§205a et seq.

As required by U.S. DOT or FTA, Commission agrees to use the metric system of measurement in its Project activities, pursuant to the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. §§ 205a *et seq.*; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and other U.S. DOT or FTA regulations, guidelines, and policies. To the extent practicable and feasible, the Commission agrees to accept products and services with dimensions expressed in the metric system of measurement.

22. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS (ITS) ARCHITECTURE AND STANDARDS

23 U.S.C. §502

Commission agrees to conform, to the extent applicable, to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5206(e) of TEA-21, 23 U.S.C. § 502 note, and with FTA Notice, "PTA National ITS Architecture Policy on Transit Projects" 66 *Fed. Reg.* 1455 *et seq.*, January 8, 2001, and other subsequent Federal directives that may be issued.

23. FEDERAL MINIMUM WAGE REQUIREMENTS

29 U.S.C. § 201 *et seq.*

The Fair Labor Standards Act of 1938, as amended 29 U.S.C. 201, *et seq.* (“FLSA”). The FLSA establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments. Covered nonexempt workers are entitled to a minimum wage of not less than \$7.25 per hour effective July 24, 2009. Overtime pay at a rate not less than one and one-half times the regular rate of pay is required after 40 hours of work in a workweek.

FLSA Minimum Wage: The federal minimum wage is \$7.25 per hour effective July 24, 2009. Many states also have minimum wage laws. In cases where an employee is subject to both state and federal minimum wage laws, the employee is entitled to the higher minimum wage.

FLSA Overtime: Covered nonexempt employees must receive overtime pay for hours worked over 40 per workweek (any fixed and regularly recurring period of 168 hours — seven consecutive 24-hour periods) at a rate not less than one and one-half times the regular rate of pay. There is no limit on the number of hours employees 16 years or older may work in any workweek. The FLSA does not require overtime pay for work on weekends, holidays, or regular days of rest, unless overtime is worked on such days.

Hours Worked: Hours worked ordinarily include all the time during which an employee is required to be on the employer’s premises, on duty, or at a prescribed workplace.

Recordkeeping: Employers must display an official poster outlining the requirements of the FLSA. Employers must also keep employee time and pay records.

Youth Employment: These provisions are designed to protect the educational opportunities of minors and prohibit their employment in jobs and under conditions detrimental to their health or well-being.

For additional requirements and guidelines, Contractor must visit the website for the U.S. Department of Labor at: <http://www.dol.gov/esa/whd/Flsa/>

Applicable Laws and Regulations

29 U.S.C. 201, *et seq.*

29 CFR Chapter V

See the Federal Web site, <http://www.dot.ca.gov/davisbacon>

24. DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

a General DBE Requirements: In accordance with federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), the Commission has

adopted a Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs" (the "Regulations"). The Project is subject to these stipulated regulations. In order to ensure that the Commission achieves its overall DBE Program goals and objectives, the Commission encourages the participation of DBEs as defined in 49 CFR 26 in the performance of contracts financed in whole or in part with U.S. DOT funds.

b. Discrimination: Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts. Any terms used in this section that are defined in 49 CFR Part 26, or elsewhere in the Regulations, shall have the meaning set forth in the Regulations. In the event of any conflicts or inconsistencies between the Regulations and the Commission's DBE Program with respect to DOT-assisted contracts, the Regulations shall prevail.

c. Commission's Race-Neutral DBE Program: Pursuant to recently released Race-Neutral DBE policy directives issued by the U.S. DOT in response to the Ninth Circuit U.S. Court of Appeals decision in *Western States Paving Co. v. Washington State Department of Transportation*, the Commission has implemented a wholly Race-Neutral DBE Program.

A Race-Neutral DBE Program is one that, while benefiting DBEs, is not solely focused on DBE firms. Therefore, under a Race-Neutral DBE Program, the Commission does not establish numeric race-conscious DBE participation goals on its DOT-assisted contracts. Contractor shall not be required to achieve a specific level of DBE participation as a condition of contract compliance in the performance of this DOT-assisted contract. However, Contractor shall adhere to race-neutral DBE participation commitment(s) made at the time of contract award.

d. Definitions: The following definitions apply to the terms as used in these provisions:

1. "Disadvantaged Business Enterprise (DBE)" means a small business concern: (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

2. "Small Business Concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto, except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$19.57 million over the previous three fiscal years.

3. “Socially and Economically Disadvantaged Individuals” means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans, women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, or by the Commission pursuant to 49 CFR part 26.65. Members of the following groups are presumed to be socially and economically disadvantaged:

A. “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;

B. “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

C. “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

D. “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;

E. “Asian-Indian Americans,” which includes persons whose origins are from India, Pakistan, and Bangladesh; and

F. Women, regardless of ethnicity or race.

4. “Owned and Controlled” means a business: (a) which is at least 51 percent owned by one or more “Socially and Economically Disadvantaged Individuals” or, in the case of a publicly-owned business, at least 51 percent of the stock of which is owned by one or more “Socially and Economically Disadvantaged Individuals”; and (b) whose management and daily business operations are controlled by one or more such individuals.

5. “Manufacturer” means a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by Contractor.

6. “Regular Dealer” means a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the Contract are bought, kept in stock, and regularly sold to the public in the usual course of business. The firm must engage in, as its principal business, and in its own name, the purchase and sale of the product in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock if it owns or operates distribution equipment.

7. “Other Socially and Economically Disadvantaged Individuals” means those individuals who are citizens of the United States (or lawfully admitted permanent

residents) and who, on a case-by-case basis, are determined by Small Business Administration or the Commission to meet the social and economic disadvantage criteria described below.

A. Social Disadvantage: The individual's social disadvantage must stem from his/her color, national origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar cause beyond the individual's control.

(i) The individual must demonstrate that he/she has personally suffered social disadvantage.

(ii) The individual's social disadvantage must be rooted in treatment, which he/she has experienced in American society, not in other countries.

(iii) The individual's social disadvantage must be chronic, longstanding and substantial, not fleeting or insignificant.

(iv) The individual's social disadvantage must have negatively affected his/her entry into and/or advancement in the business world.

(v) A determination of social disadvantage must be made before proceeding to make a determination of economic disadvantage.

B. Economic Disadvantage

(i) The individual's ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same line of business and competitive market area that are not socially disadvantaged.

(ii) The following criteria will be considered when determining the degree of diminished credit and capital opportunities of a person claiming social and economic disadvantage:

With respect to the individual:

- availability of financing
- bonding capability
- availability of outside equity capital
- available markets

With respect to the individual and the business concern:

- personal and business assets
- personal and business net worth
- personal and business income and profits

e. Race-Neutral DBE Submissions and Ongoing Reporting Requirements: In the event DBE(s) are utilized in the performance of this Contract, Contractor shall comply with reporting requirements delineated in this Section. Contractor shall complete and submit the “Monthly Race-Neutral DBE Subcontractors Paid Report Summary and Payment Verification” at the times specified herein. If Contractor is a DBE firm and/or has proposed to utilize DBE firms, Contractor shall complete and submit the Report to the Commission by the 10th of each month until completion of the Contract to facilitate reporting of race-neutral DBE participation, following the first month of Contract activity. Contractor shall report the total dollar value paid to DBEs for the applicable reporting period. Contractor shall also report the DBE’s scope of work and the total subcontract value of commitment for each DBE reported. Contractor is advised not to report the participation of DBEs toward the Commission’s race-neutral DBE attainment until the amount being counted has been paid to the DBE. Upon completion of the Contract, Contractor shall prepare and submit to the Commission a “Race-Neutral DBE Subcontractors Paid Report Summary and Payment Verification” clearly marked “Final” to facilitate reporting and capturing actual DBE race-neutral attainments. Contractor shall complete and submit a Final Report whether or not DBEs were utilized in the performance of the Contract.

f. DBE Eligibility and Commercially Useful Function Standards: A DBE must be a small business concern as defined pursuant to Section 3 of the U.S. Small Business Act and relevant regulations promulgated pursuant thereto. A DBE may participate as a prime contractor, subcontractor, joint venture partner with a prime or subcontractor, vendor of material or supplies, or as a trucking company. A DBE joint venture partner must be responsible for specific Contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest. A DBE must perform a commercially useful function in accordance with 49 CFR 26.55 (i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work). A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce to presume it is performing a commercially useful function. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources: the CUCP web site, which can be accessed at <http://www.californiaucp.com>; or

the Caltrans “Civil Rights” web site at <http://www.dot.ca.gov/hq/bep>. The CUCP DBE Directory, which may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, California 95815; Telephone: (916) 445-3520.

g. DBE Crediting Provisions: When a DBE is proposed to participate in the Contract, either as a prime Contractor or Subcontractor, only the value of the work proposed to be performed by the DBE with its own forces may be counted towards race-neutral DBE participation. If Contractor is a DBE joint venture participant, only the DBE proportionate interest in the joint venture shall be counted. If a DBE intends to subcontract part of the work of its subcontract to a lower tier Subcontractor, the value of the subcontracted work may be counted toward race-neutral DBE participation only if the DBE Subcontractor is a certified DBE and actually performs the work with their own forces. Services subcontracted to a non-DBE firm may not be credited toward the prime Contractor’s race-neutral DBE attainment.

1. Contractor is to calculate and credit participation by eligible DBE vendors of equipment, materials, and suppliers toward race-neutral DBE attainment, as follows: Sixty percent (60%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a regular dealer; or one hundred percent (100%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a DBE manufacturer.

2. The following types of fees or commissions paid to DBE subcontractors, brokers, and packagers may be credited toward the prime Contractor’s race-neutral DBE attainment, provided that the fee or commission is reasonable, and not excessive, as compared with fees or commissions customarily allowed for similar work, including:

A. Fees and commissions charged for providing bona fide professional or technical services, or procurement of essential personnel, facilities, equipment, materials, or supplies required in the performance of the Contract;

B. Fees charged for delivery of material and supplies (excluding the cost of materials or supplies themselves) when the licensed hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the material and supplies;

C. Fees and commissions charged for providing any insurance specifically required in the performance of the Contract.

3. Contractor may count the participation of DBE trucking companies toward race-neutral DBE attainment, as follows:

A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.

B. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Contract. The DBE receives credit for the total value of the

transportation services it provides on the Contract using trucks it owns, insures, and operates using drivers it employs.

C. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE.

D. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract. The DBE may also lease trucks from a non-DBE firm, including an owner-operator.

E. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement.

F. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

For purposes of this Section, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

If Contractor listed a non-certified DBE 1st tier subcontractor to perform work on this Contract, and the non-certified DBE subcontractor subcontracts a part of its work or purchases materials and/or supplies from a lower tier DBE certified subcontractor or vendor, the value of work performed by the lower tier DBE firm's own forces can be counted toward race-neutral DBE participation on the Contract.

h. Performance of DBE Subcontractors: DBE subcontractors listed by Contractor in its "DBE Race-Neutral Participation Listing" submitted at the time of proposal submittal shall perform the work and supply the materials for which they are listed, unless Contractor has received prior written authorization from Commission to perform the work with other forces or to obtain the materials from other sources. Contractor shall provide written notification to the Commission in a timely manner of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.

i. Additional DBE Subcontractors: In the event Contractor identifies additional DBE subcontractors or suppliers not previously identified by Contractor for race-neutral DBE participation under the Contract, Contractor shall notify Commission by submitting a "Request for Additional DBE Subcontractor/Supplier" to enable Commission to capture all race-neutral DBE participation. Contractor shall also submit, for each DBE identified after Contract execution, a written confirmation from the DBE acknowledging that it is participating in the Contract for a specified value, including the corresponding scope of work (a subcontract agreement can serve in lieu of the written confirmation).

j. DBE Certification Status: If a listed DBE subcontractor is decertified during the life of the Project, the decertified subcontractor shall notify Contractor in writing with the date of decertification. If a non-DBE subcontractor becomes a certified DBE during the life of the Project, the DBE subcontractor shall notify Contractor in writing with the date of certification. Contractor shall furnish the written documentation to Commission in a timely manner. Contractor shall include this requirement in all subcontracts.

k. Contractor's Assurance Clause Regarding Non-Discrimination: In compliance with State and Federal anti-discrimination laws, Contractor shall affirm that it will not exclude or discriminate on the basis of race, color, national origin, or sex in consideration of contract award opportunities. Further, Contractor shall affirm that they will consider, and utilize subcontractors and vendors, in a manner consistent with non-discrimination objectives.

l. Any forms listed above will be provided by Commission upon request of Contractor.

ITEM # E6

DATE: July 2, 2014

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

THROUGH: P. Scott Graham, CEO/General Manager

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

SUBJECT: FUNDING AGREEMENTS BETWEEN OMNITRANS AND SUB-RECIPIENTS OF JARC AND NEW FREEDOM FUNDING

FORM MOTION

Authorize the CEO/General Manager to execute the funding agreements between Omnitrans and remaining four awardees of Section 5316 Job Access Reverse Commute (JARC) and Section 5317 New Freedom (NF) federal funds awarded through SANBAG's 2013 Call for Projects, including OPARC, Community Senior Services, Valley Transportation Agency, and United Way 211.

These agreements have been reviewed and approved by Omnitrans legal counsel. A receive and file item on this topic was presented to the Plans and Programs Committee at its December 3, 2013 meeting, and to the Board of Directors at its January 8, 2014 meeting.

BACKGROUND

On January 8, 2014, the Board of Directors reviewed a memo detailing the upcoming sub-recipients for Job Access Reverse Commute (JARC) and New Freedom (NF) funding, who would be entering into funding agreements with Omnitrans. Exhibit A shows the four pending funding agreements.

On October 2, 2013, SANBAG's Board of Directors awarded OPARC a total of \$363,850 in Section 5316 Job Access Reverse Commute (JARC) and Section 5317 New Freedom (NF) federal funds to purchase a vehicle and operating OPARC's transportation Connect program through the 2013 Call for Projects. OPARC's project will use the awarded funds to purchase modified vans to transport OPARC clients to community activities including employment, skills training and educational physical fitness. For the remaining three projects the descriptions are as follows:

- a) Community Senior Services: operating funds for the mileage reimbursement volunteer driver program for seniors and persons with disabilities;

- b) VTrans: continue funding for Travel Training Programs.
- c) United Way 211: operating funds for the One Click One Call Access Mobility and Marketing program.

Exhibit A

<i>Sub-Recipient</i>	<i>JARC</i>	<i>NF</i>	<i>Omnitrans Administrative Amounts</i>	<i>Completed Funding Agreement</i>
Victor Valley Transit Authority	\$167,429	\$75,381	\$9,712	Completed
Central City Lutheran Mission	\$54,727	\$98,231	\$6,118	Completed
Pomona Valley Workshop	\$318,751	\$123,960	\$17,708	Completed
Community Senior Services		\$374,450	\$14,978	Pending
Valley Transportation Agency	\$588,556	\$505,634	\$43,768	Pending
United Way 211	\$181,309	\$60,436	\$9,670	Pending
OPARC	\$353,776	\$10,074	\$14,554	Pending
Total	\$1,664,548	\$1,248,166	\$116,509	

These funds are part of a pass-through of federal funds in grants CA-37-X174, CA-57-X089 and state local transit funds. The budget identifies \$353,776 in Federal Transit Administration Section 5316 JARC and \$10,074 in Section 5317 NF funding. A total of \$399,374 local matching funds will be provided by OPARC, Inland Regional Center, and Valley Transportation Services. As the FTA grant recipient, Omnitrans will receive approximately \$14,554 for administrative costs and grant oversight, as shown in the above table.

The funding agreement with OPARC is attached. The same standard contract language will be used in the sub-recipient agreements for Community Senior Services, Valley Transportation Agency, and United Way 211. The agreement language has been reviewed and approved by Omnitrans legal counsel. The remaining funding agreements for Community Senior Services, United Way 211 and Valley Transportations Agency's Mobility Management are scheduled to be completed by November 2014. The primary reason for the schedule difference in attaining final approval is to reduce the overlapping of existing funds that are being passed through from past JARC and NF awards.

CONCLUSION

Staff recommends the Board of Directors authorize the CEO/General Manager to execute the funding agreements between Omnitrans and the four remaining sub-recipients, including OPARC, Community Senior Services, Valley Transportation Agency, and United Way 211. The CEO/General Manager will execute each agreement as it is ready, with the expectation that all agreements will be completed by November 2014.

PSG:AR:JB:BR

**SUBGRANTEE FUNDING AGREEMENT FOR JOB ACCESS REVERSE COMMUTE GRANT
AND NEW FREEDOM GRANT FUNDS**
DUNs identification number 06-6166562

This Funding Agreement for Job Access Reverse Commute and New Freedom grant funds (“**Agreement**”) by and between OPARC (“**Sub-grantee**”) and Omnitrans, a joint powers authority (“**Omnitrans**”), is entered into this ___ day of _____, 2014. Sub-grantee and Omnitrans are sometimes individually referred to as “**Party**” and collectively as “**Parties.**”

Recitals

A. This Agreement describes the respective responsibilities of Sub-grantee and Omnitrans for capital and operating expenses (“**Project**”) in connection with Omnitrans Fiscal Year 2012 Section 5316 Job Access Reverse Commute (JARC) grant funding and Omnitrans Fiscal Year 2012 Section 5317 New Freedom (NF) grant funding.

B. Omnitrans previously submitted a grant application for Section 5316 JARC funds for Fiscal Year 2010, Section 5317 NF funds for Fiscal Year 2012 to the Federal Transit Administration (“**FTA**”) to obtain funding for the Project. In 2012, the FTA awarded Omnitrans \$353,778 in Section 5316 JARC (CFDA 20.516) funds and \$10,074 in Section 5317 NF (CFDA 20.521) funds. The Parties now desire that the JARC and NF funds awarded to Omnitrans be used for the benefit of Sub-grantee, as a Sub-grantee.

C. To implement the Project, Sub-grantee desires to use operating funds to enhance OPARC Connects transportation service that it is used to transport OPARC clients to the Work Activity program. Capital funds are to be used to purchase vehicles for the program.

D. As a Sub-grantee receiving JARC and NF funds, Sub-grantee desires to undertake the Project and comply with all provisions of the Grant Agreements and applicable federal, state and local laws and regulations (“**Applicable Law**”).

NOW THEREFORE, based on the forgoing recitals and the following promises and covenants the Parties agree:

1. Obligations of Omnitrans. Pursuant to, and to the extent provided in, this Agreement, Omnitrans shall take the following actions:
 - a. Reimburse Sub-grantee for the Project, up to \$353,778 in Section 5316 JARC funds (Grant No. CA-37-X174), up to \$10,074 in Section 5317 NF funds (CA-57-X089) in conformity with the following procedure:
 - (1) For each disbursement requested, Sub-grantee shall provide a written invoice to Omnitrans specifying the amount requested to be disbursed and the purpose of the disbursement, and shall provide such additional supporting documentation and background information as Omnitrans may reasonably require (the “**Disbursement Request**”) by no later than the 15th of each month.
 - (2) Each Disbursement Request shall be accompanied by a written certification of Sub-grantee’s Executive Director that such disbursement will not constitute any violation of the terms of the Grant Agreements, or of Applicable Law, and that

Sub-grantee will use the disbursement for the purpose indicated in the Disbursement Request.

- (3) Within five (5) business days of the receipt of an invoice and accompanying certification, Omnitrans shall notify Sub-grantee as to what, if any, additional supporting documentation and background information it requires.
 - (4) Within the first week of the following month after invoice submittal to Omnitrans pursuant to above, Omnitrans shall: (i) disburse (including through electronic transfer of funds, if so requested and if Sub-grantee provides the necessary information) the amount requested, unless Omnitrans provides written notice that it cannot disburse such amount without violating the terms of either the Grant Agreements or of Applicable Law; or (ii) notify Sub-grantee through written notice as to why it is unable to disburse some or all of the requested funds without violating the terms of either the Grant Agreements or Applicable Law.
 - (5) To the extent that the FTA advises Omnitrans that a disbursement would constitute a violation of the terms of either the Grant Agreements or Applicable Law, Omnitrans shall have no obligation to disburse such funds. Notwithstanding any Sub-grantee certification, Omnitrans may solicit, at Sub-grantee expense, a legal opinion from competent counsel of its choice if Omnitrans has a good faith and reasonable question about whether a disbursement will result in a violation of the terms of the Grant Agreements or of Applicable Law.
 - (6) Omnitrans shall have no liability to Sub-grantee for any refusal to disburse funds so long as Omnitrans has documented and provided written notice to Sub-grantee that such disbursement would constitute a violation of the terms of the Grant Agreements or Applicable Law.
 - b. Prepare and submit to the FTA on a timely basis all required periodic reports and milestone updates, so long as it timely receives all necessary information from Sub-grantee.
 - c. Conduct itself so that any aspect of Omnitrans' participation in this Agreement and the actions required of it hereunder, will be in compliance with the terms of the Grant Agreements and with Applicable Law.
 - d. Comply with all requirements of the FTA Master Agreement, found at <http://www.fta.dot.gov/documents/16-Master.pdf>.
2. Payment of Administrative Expenses of Omnitrans. As compensation for the obligations undertaken by Omnitrans pursuant to the terms of this Agreement, an indirect overhead charge will be charged to and paid from Section 5316 Grant No. CA-37-X174, Section 5317 Grant Nos. CA-57-X089 grant funds to account for all administration costs associated with managing the Project (the "**Administrative Expenses**"). Omnitrans will charge 4% of the total FTA amount (approximately \$14,554) as Administrative Expenses. Project funds shall not be used for the Administrative Expenses.
 3. Warranties of Sub-grantee. Sub-grantee warrants to Omnitrans that:

- a. Sub-grantee has or will have, prior to the necessity of expending them, all funds necessary to provide the local matching funds required to receive the FTA Section 5316 and Section 5317 grant funds (the “**Match Obligation**”). The approximate amount of the Match Obligation for the Project is \$399,374.
 - b. To Sub-grantee’s knowledge, Omnitrans’ prior submission of the FTA Section 5316 and Section 5317 grant application on behalf of Sub-grantee has not and will not violate the terms of the Grant Agreements or any provision of the Applicable Law.
 - c. Sub-grantee will conduct itself so that all aspects of the Project and any aspect of Sub-grantee’s participation in this Agreement, including the actions contemplated by this Agreement, will be in compliance with the terms of the Grant Agreements and with Applicable Law.
 - d. Sub-grantee will use the disbursements for the purposes indicated in its Disbursement Request.
 - e. Sub-grantee will agree to comply with 49 U.S.C. § 5323(j) and FTA regulations, “Buy America Requirements,” 49 C.F.R. Part 661, and any amendments thereto.
 - f. Sub-grantee will comply with all requirements of the FTA Master Agreement, found at <http://www.fta.dot.gov/documents/16-Master.pdf>, including submission to Omnitrans on a quarterly basis, of reports that document the status of the Project’s implementation progress, including task completion status, budget status, and adherence to the Project, as defined in the grant applications.
4. Obligations of Sub-grantee. Pursuant to, and to the extent provided in, this Agreement, Sub-grantee shall take the following actions:
- a. Provide Omnitrans all information that is reasonably needed for Omnitrans’ performance of its obligations hereunder and pursuant to the Grant Agreements.
 - b. Satisfy Sub-grantee’s Match Obligation and submit evidence of the dollar amount and source(s) of the funds, as Omnitrans may reasonably require. Sub-grantee may utilize its payment of staff salaries, benefits and expenses in administrative support for the Project to satisfy its Match Obligation.
 - c. Notify Omnitrans of any changes in the scope or description of the Project.
 - d. Certify to Omnitrans for each Disbursement Request that, to the best of Sub-grantee’s knowledge, such disbursement will not constitute any violation of either the provisions of the Grant Agreements or of Applicable Law and that Sub-grantee will use the disbursement as indicated in the Disbursement Request found in Section 1.
 - e. Provide to Omnitrans all information needed for quarterly Project reporting and milestone updates in a timely manner to allow Omnitrans enough time to prepare and submit to the FTA on a timely basis all required or requested FTA reports and updates. In no event shall such reports be received later than fifteen (15) days prior to the required date of submission to the FTA of such report or update, provided Omnitrans has provided Sub-grantee with notice of the required date of submission no less than thirty (30) days prior to the required date of submission to the FTA.

- f. Ensure that all aspects of the Project and any aspect of Sub-grantee's participation in this Agreement and the actions contemplated of Sub-grantee by this Agreement will be in compliance with the terms of the Grant Agreements and with all Applicable Law.
 - g. Sub-grantee shall provide Omnitrans the required signed Self-Certification Form by July 31 of each year, in accordance with FTA audit requirements.
 - h. Sub-grantee shall provide Omnitrans a copy of its annual single audit for each fiscal year, in accordance with FTA audit requirements.
 - i. The Sub-grantee shall comply with all applicable sections of FTA Circular 5010.1d pertaining to the management of federally funded assets. The Sub-grantee will provide all necessary information to Omnitrans so that Omnitrans can coordinate with the FTA related to the requirements in Circular 5010.1d.
5. Exercise of Rights under the Agreement. The CEO/General Manager of Omnitrans, or his or her designee, shall exercise the rights of Omnitrans under this Agreement including, without limitation, accepting the certifications of Sub-grantee required under the terms of this Agreement. The Chief Executive Officer of Sub-grantee, or his or her designee, shall exercise the rights of Sub-grantee under this Agreement; however, any certifications of Sub-grantee required under the terms of this Agreement shall be provided only by the Chief Executive Officer or such other representative of Sub-grantee as is specified by action of the Sub-grantee's governing body.
6. Insurance. Sub-grantee shall require all contractors or consultants hired to perform work or services on the Project to obtain, and require their sub-consultants and sub-contractors to obtain, insurance of the types and in the amounts described below and satisfactory to Omnitrans. Such insurance shall be maintained throughout the term of this Agreement, or until completion of the Project, whichever occurs last.
- a. Commercial General Liability Insurance. Occurrence version commercial general liability insurance or equivalent form with a combined single limit of not less than \$1,000,000.00 per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the Project or be no less than two times the occurrence limit. Such insurance shall:
 - (1) Name Omnitrans, its officials, officers, employees, agents, and consultants as insured with respect to performance of the work or services on the Project and shall contain no special limitations on the scope of coverage or the protection afforded to these insured;
 - (2) Be primary with respect to any insurance or self-insurance programs covering Omnitrans, its officials, officers, employees, agents, and consultants; and
 - (3) Contain standard separation of insured provisions.
 - b. Business Automobile Liability Insurance. Business automobile liability insurance or equivalent form with a combined single limit of not less than \$1,000,000.00 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles.
 - c. Professional Liability Insurance. Errors and omissions liability insurance with a limit of not less than \$1,000,000.00. Professional liability insurance shall only be required of design or engineering professionals.

- d. Workers' Compensation Insurance. Workers' compensation insurance with statutory limits and employers' liability insurance with limits of not less than \$1,000,000.00 each accident.
7. Mutual Indemnification. Omnitrans and Sub-grantee shall defend, indemnify and hold the other Party, its officials, officers, employees, agents, and consultants free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, to the extent arising out of or incident to any intentional or negligent acts, errors or omissions of the indemnifying Party, its officials, officers, employees, agents, and consultants related to a breach of this Agreement or any act or omission arising out of the activities governed by this Agreement. The indemnifying Party's obligation to indemnify includes without limitation the payment of all consequential damages and reasonable attorneys' fees, expert witness fees and other related costs and expenses of defense. The sole exception to the indemnifying Party's obligation to indemnify shall be for acts of negligence or willful misconduct of the indemnified Party, its officials, officers, employees, agents, and consultants. This is a comparative negligence provision and each Party shall bear their own costs to the extent to which they are each negligent. The indemnifying Party shall defend, at its own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the indemnified Party, its officials, officers, employees, agents, and consultants. The indemnifying Party shall pay and satisfy any judgment, award or decree that may be rendered against the indemnified Party, its officials, officers, employees, agents, and consultants in any such suits, actions or other legal proceedings. A Party's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the other Party, its officials, officers, employees, agents, and consultants.
8. Term. This Agreement shall terminate upon the rejection of any grant application for the Project by the FTA or, assuming the award of the grant sought, upon the completion of the disbursement of the funds obtained from the grant and the completion of all reports, updates or any other documentation or responsibility of Omnitrans related to the grant. In all events, this Agreement shall terminate within the time limits set forth in applicable FTA procedures and regulations, but in no event later than three (3) years from the date of the Agreement's execution date.
9. Force Majeure.
 - a. An "Uncontrollable Force" (force majeure) is any occurrence beyond the control of a Party which causes that Party to be unable to perform its obligations hereunder and which a Party has been unable to overcome by the exercise of due diligence, including but not limited to, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strike, labor dispute, action or inaction of legislative bodies, judicial bodies, or regulatory agencies, or other proper authority, excepting the governing body of the Party asserting the Uncontrollable Force, which may conflict with the terms of this Agreement. In no event shall any Uncontrollable Force excuse the obligation to issue disbursements to Sub-grantee as soon as Omnitrans is reasonably able to do so.
 - b. Subject to Section 9a, neither Party shall be considered to be in default in the performance of any of the obligations contained in this Agreement when and to the extent failure of performance shall be caused by an Uncontrollable Force.
 - c. If either Party, because of an Uncontrollable Force, is rendered wholly or partly unable to perform its obligations under this Agreement, the Party shall be excused from whatever

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

- d. If either Party's ability to perform cannot be corrected when the Uncontrollable Force is caused by the actions or inactions of legislative bodies, judicial bodies, or regulatory agencies or other proper authority, the Parties agree to meet in good faith to determine if this Agreement may be amended to comply with the legal or regulatory change which caused the nonperformance of the Parties.
10. Authorization by Omnitrans. Omnitrans represents that the terms and execution of this Agreement, including all Exhibits, have been duly authorized by Omnitrans' governing board and that the persons signing this Agreement on its behalf have the necessary authority to do so.
11. Authorization by Sub-grantee. Sub-grantee represents that the terms and execution of this Agreement, including all Exhibits, have been duly authorized by Sub-grantee's governing body and that the persons signing this Agreement on its behalf have the necessary authority to do so.
12. Headings. All paragraph headings throughout this Agreement are for convenience of reference only.
13. Additional Documents. Each of the Parties shall execute such additional documents as the other Party may reasonably request in order to carry out or implement any of the provisions of this Agreement, which request shall not be unreasonably refused.
14. Litigation Expenses. If after this Agreement is in effect, any action or proceeding of any nature shall be commenced seeking to enforce, construe or rescind, or otherwise relating to this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover from the other, in addition to all other sums recoverable, its reasonable litigation expenses, including reasonable attorneys' fees, expert witness fees and other related litigation expenses and costs.
15. Entire Agreement. This Agreement constitutes the sole and entire agreement between the Parties hereto, and no modification, alteration or amendment shall be binding unless expressed in writing and signed by the Parties. No representation, warranty, covenant, inducement or obligation not included in this Agreement shall be binding, and this Agreement supersedes all prior negotiations, agreements, arrangements and undertakings among the Parties hereto with respect to the matters set forth in this Agreement. It is the intent of the Parties that this Agreement is an integrated agreement and that no evidence may be introduced to vary in any manner its terms and conditions.
16. Accuracy of Representations. As of the date each signed this Agreement, the representations herein of both Parties are true and correct in all material respects.

17. Originals and Copies. This Agreement with the Exhibits attached hereto may be executed in counterparts, each of which shall be deemed an original. In any action or proceeding, an exact and correct copy may be used in lieu of an original.
18. Construction of Agreement.
- a. Equal Construction. This Agreement and the Exhibits attached hereto shall not be construed in favor of or against a Party by reason of participation or lack of participation of that Party or its counsel in the drafting of this Agreement and the Exhibits attached hereto. This Agreement and the attached Exhibits shall be interpreted and construed as drafted by all Parties with equal participation in the drafting hereof.
- b. Internal Consistency. The Parties intend that the terms of this Agreement and of the Exhibits are all internally consistent with each other and should be construed to that end. If any irreconcilable inconsistency shall be determined between the terms of this Agreement and the terms of any of the Exhibits attached hereto, the terms of this Agreement shall control over the terms of any of the Exhibits.
19. Notices. All notices hereunder shall be in writing and shall be effective upon receipt. All notices and communications, including invoices, between the Parties to this Agreement shall be either personally delivered, sent by first-class mail, return receipt requested, or sent by overnight express delivery service, postage or other charges fully prepaid, as follows:
- | | |
|--|--|
| TO OMNITRANS: | TO SUB-GRANTEE: |
|
Omnitrans
1700 West Fifth Street
San Bernardino, California 92411
Attention: Brenda Ramirez, Planner II |
OPARC
9029 Vernon Avenue
Montclair, CA 91763
Attention: Sonia J. Borja, Vice President
of Finance & Administration |
20. No Third Party Beneficiaries. There are no third party beneficiaries to this Agreement. Other than the Parties, no person, political subdivision, agency, board, department, division or commission shall be entitled to bring an administrative or judicial proceeding to enforce or interpret its terms.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE TO FUNDING AGREEMENT FOR JOB ACCESS REVERSE COMMUTE
GRANT AND NEW FREEDOM GRANT FUNDS**

IN WITNESS WHEREOF, this Agreement has been executed by the Parties hereto as of the day and year first written above.

OMNITRANS

OPARC

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

By: _____
Signature

Name

Title

APPROVED AS TO FORM:
COUNTY COUNSEL

By: _____
Legal Counsel

ITEM # E7

DATE: July 2, 2014

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

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE AWARD – PURCHASE ORDER
MODULAR WHEELCHAIR RESTRAINT SYSTEMS**

FORM MOTION

Authorize the CEO/General Manager to award a Purchase Order to Gillig LLC of Hayward, CA, for the provision of 13 Modular Wheelchair Restraint Systems in the amount of \$79,059.31, including sales tax, plus a contingency of \$2,000.00, and Capital Allocation Plan (CAP) of 3.27% in the amount of \$2,650.64 or a total not-to-exceed amount of \$83,709.95.

BACKGROUND

On April 24, 2104, staff released Request for Quotes RFQ-MNT14-253 for the provision of forward facing wheelchair securement stations on Omnitrans' online bidding system. The securement stations are the first forward facing wheelchair securement stations specifically designed and tested for transit wheelchair passenger transportation.

Three bids were received electronically by the June 4, 2014 deadline. Two were deemed responsive.

Listed below are the bid prices:

Company	Price*
Gillig, LLC, Hayward, CA	\$73,034.00
New Flyer, Winnipeg, Canada	\$92,578.59

*Sales tax was not included in bid pricing.

Award is recommended to the lowest responsive and responsible bidder. Price is deemed fair and reasonable as the bid is \$14,162.00 less than the Independent Cost Estimate of \$87,196.

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

FUNDING SOURCE

The cost associated with this procurement is budgeted in Omnitrans' Capital Program as follows:

FUNDING	GRANT	YEAR	PROJECT NAME	INTERNAL ORDER	AMOUNT
FTA	CA-95-X124	2011	sbX E Street Corridor	X11B20102Q	\$83,709.95

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

CONCLUSION

Approving award of this purchase order ensures safe seating for disabled and elderly passengers using mobility devices.

PSG:JMS:EP

Other
Tuesday, April 01, 2014

ITEM #E8



sbX brings BRT to the Inland Empire

April 1, 2014

By David Rutherford

With the construction phase substantially complete, Omnitrans, the transit provider in San Bernardino County, CA, began testing its new sbX Bus Rapid Transit (BRT) operations in early February. Omnitrans expects the system to be fully operational and underway later this month. The Omnitrans sbX is the first-of-its-kind express service in southern California's Inland Empire, connecting California State University at San Bernardino (CSUSB), downtown San Bernardino, the City of Loma Linda, the Loma Linda University Medical Center and the VA Hospital where the system terminates.

The system runs along E Street in San Bernardino as a dedicated bus lane through the center third of the corridor. 5.2 of the 15.7 miles are identified by white dots in the red line. The other 10.5 miles is in mixed-flow traffic with curbside service.

Using 14 New Flyer XN60 60-foot articulated transit buses to travel the 15.7-mile corridor between northern San Bernardino and Loma Linda, the sbX improves travel time for existing transit riders in San Bernardino and serves as the centerpiece for economic development efforts in this region.

With the launch of sbX comes a number of historic firsts associated with BRT in this country.

- The first BRT application to receive a Project Construction Grant Agreement in the history of FTA's Region IX.
- The first to receive the maximum funding allowable (\$75M for projects with capital cost below \$250M) for a BRT Small Starts project in Region IX.
- The first BRT system completed in 10 years from conceptual design to revenue operation.
- The New Flyer XN60 is the first five-door, 60-foot articulated coach to run on compressed natural gas (CNG). Omnitrans was one of the first fleets to run entirely on CNG among agencies in southern California, the region with some of the highest air pollution levels in the country.

Omnitrans sbX will operate 10-minute headways during weekday peak periods and 15 minute off-peak headways. The ridership projection for the first year of service is approximately 5,600 passengers per day, who will include people who live and work in the corridor, high school and college students, veterans, seniors and persons with disabilities.

The sbX service has created and approved an additional 23 employees as part of Omnitrans annual budget, which include 16 coach operators, a field supervisor of operations, two equipment mechanics, one facility mechanic, one utility maintenance service worker, one maintenance worker for stops and stations, and one systems engineer for information. While 25 coach operators are dedicated to the sbX system, the net increase of 16 is due to the subsequent reduction of service on Omnitrans Route 2.

Planning and funding

Omnitrans began an alternatives analysis in early 2004 to evaluate transportation options in a corridor served by Omnitrans Route 2, the highest performing bus route in the Omnitrans system. In December 2005, local stakeholders selected BRT as the locally preferred alternative. The next two years, the transit agency worked with local stakeholders to identify funding sources and station locations. FTA approved the project for development in December 2007, issued a Finding of No Significant Impact in September 2009, with Omnitrans receiving a Project Construction Grant Agreement in 2011.

Ninety-six percent of the \$191.7 million for this construction project came from federal, state and county funding used only for designated transit projects. The cities of Loma Linda and San Bernardino provided in-kind contributions such as permit fee waivers and facility use.

The breakdown: Federal, 763.9 percent; State, 15.7 percent; County, 6.2 percent; and 4.2 percent from Loma Linda and San Bernardino in-kind contributions.

The total cost for corridor construction includes the traffic signal priority system, the purchase of the NewFlyer 60-foot vehicles and modifications to the Omnitrans vehicle maintenance facility to accommodate these larger vehicles.

Transit-oriented development

During the E Street Corridor planning process, Omnitrans worked closely with the cities and corridor stakeholders to locate the stations at major existing activity centers or in areas with potential for transit-supportive uses.



The California State University, San Bernardino sbX station serves as a model for other locations.

San Bernardino adopted a new general plan in 2005 to include transit-supportive principles for mixed-use development and incentives for pedestrian amenities and shared parking — with the highest densities of development targeted towards the sbX corridor. Loma Linda also drafted a general plan with transit-supportive principles. Both cities are developing revised zoning regulations consistent with their general plan updates.

The City of San Bernardino has incentives in its general plan such as density bonuses to promote transit supportive uses and design. Most of the stations are in areas where tax increment financing and other development incentives are available.

While there are several recent examples of transit-supportive development in the Southern California region, none fell within the E Street Corridor. A major mixed-use redevelopment project is planned

for the site of an aging mall in downtown San Bernardino and a proposed intermodal transit center will include joint development opportunities.

Riverside and San Bernardino Counties expect to gain more than one million residents over the next 20 years, the greatest percentage of growth in population for period 2000 to 2025 in the Southern California region. A 4,000-acre portion of the proposed station areas lies within designated redevelopment areas. Commercial or institutional build out of these areas could result in nearly 30 million square feet and over 45,000 housing units of new development, best served by express transit systems such as sbX.

<http://busride.com/2014/04/sbx-brings-brt-to-the-inland-empire/>

Other

Friday, April 18, 2014



In The Spotlight: Omnitrans Rider, Veteran & Leather Worker Ed Miller

Posted on [April 18, 2014](#) by [HHV Staff](#)



Pictured left: Ed Miller with his prizewinning leather belt and holster

Longtime Omnitrans rider Ed Miller is a Vietnam War veteran, a talented leather craftsman and a recovering addict who is helping other vets in their struggle with drug and alcohol abuse. His story is an inspiration to anyone who thinks it's too late to change their life.

In some ways the deck was stacked against Ed from the beginning. When he was just an infant, his mother used to put alcohol in his bottle to quiet him and get him to sleep. His father was also an alcoholic. But it wasn't until he received a "Dear John" letter during the Vietnam War that he started drinking heavily and began using opium. By the time he was discharged, he was completely addicted.

"For 43 years, my only focus was on how to get more dope and more alcohol," admits Ed frankly. "It's amazing that I still have any mental capacity after that. I drank and smoked my family away."

Finally in 2006, Ed hit rock bottom. He devised a detailed suicide plan but decided to attend one last therapy session at the Loma Linda Veteran's Affairs (VA) hospital. Psychiatrist Richard Newman took one look at him and knew that this was it. He asked Ed just one question. "Do you really want to change your life?" And Ed said yes.

"I quit cold turkey and never went back," says Ed. "I got into the AA program, and it was like a little light bulb went off in my head. Hmmm . . . I have a choice. Do I want to fall asleep or pass out? Do I want to wake up or come to?"

"My life is very different now. I used to have to lock my stuff into a car to make sure it would still be there. At night I would pass out on my [drug] connection's couch. Now I get to go home to where I live and enjoy it."

Two years into his recovery, Ed joined a leatherworking class with Steve Nicholas at the VA hospital and discovered he had a gift for leather tooling and design. His intricate creations have earned him a well-deserved reputation among his peers. He is the current vice president of the Leather Artisans Guild of California.

In February, Ed competed in a veterans arts & crafts show and took home three first place awards for tooling, stamping and leather kit. He and the other first place winners now face a second round. The final gold winners will receive an all-expense paid trip to Milwaukee where they will go on to compete on the national level against other veterans.

Although he is passionate about his art, it is giving back to other vets that means the most to him. Three mornings a week he volunteers for Project Save at the VA, where he serves as a living example of what's possible when you decide to turn your life around.



"About 50% of these guys come into the program because they are on parole or probation or have a court date coming up. I tell them they can wait around like me for 43 years, or they can change their lives now and enjoy the time they have ahead of them. If you were a civilian, you would have to pay over \$10,000 to be in a 30-day recovery program like this. And it's not hard to do. You just have to be honest with yourself—no more excuses—and follow along with what the facilitator tells you to do."

Ed believes that Omnitrans provides a critical service for vets, especially those in the recovery process. "A lot of young vets in the program have had their cars impounded or mom and dad are tired of giving them money for gas and insurance. With the bus, they can't say their car broke down or that they can't afford the gas. There are no excuses. They can attend program and get where they need to go without a big expense. It makes everything possible for them."

Ed himself has been an Omnitrans rider for 3 ½ years and says it keeps him connected to his community. "Coming home I get to listen to the younger guys complain on the bus," he chuckles. He sometimes shares his own observations with them that put it all in perspective.

"When you get past the complaining and the excuses, that's when you have the power to change your life," he says. "You just have to want it."

Posted on April 2, 2014 [by Omnitrans](#)
Written by Juno Kughler Carlson



A symbol of pride: Ed's leather stamp

2014 BRT SURVEY

Projects Abound, Bring Economic Benefits



Connecting to jobs and other transit modes as well as supporting economic development were big boons cited. Last year's sequestration hurt some projects, but not enough to keep this from being a strong year for the mode, with 10 new lines opening.

BY NICOLE SCHLOSSER, Senior Editor

METRO's bus rapid transit (BRT) survey results for 2014 include 41 projects, 40 of which are located in the U.S., with one in Canada.

This year, we updated our survey to include questions about the number of doors per vehicle, more specific passenger amenity information and boarding characteristics, offering options such as curb level boarding, floor level platforms or bridge plates at doors.

The upcoming year will be a big one for BRT. Launching new routes are Austin, Texas; Los Angeles; Orlando, Fla.; El Paso, Texas; San Bernardino, Calif.; Seattle; Fort Collins, Colo.; and San Diego, totaling 10 new lines, nearly dou-

ble the number slated for last year. The projects planned for the farthest in the future are the San Francisco Municipal Transportation Agency's Geneva (2020) and Minneapolis-based Metro Transit's Orange Line (2019.)

Two of Florida's projects were in the spotlight recently: U.S. Transportation Secretary Anthony Foxx toured the nearly completed East-West Circulator in downtown Orlando, Fla. The new line, scheduled to open this spring, will connect area residents with several employers and attractions.

The Federal Transit Administration (FTA) is providing approximately \$8 million in funds toward the \$10 million project.

In addition, the U.S. Department of Transportation committed \$13 million in Transportation Investment Generating Economic Recovery (TIGER) funding for construction of another BRT line to link the Parramore neighborhood — one of Orlando's lowest-income neighborhoods — to other rapid bus and commuter rail service.

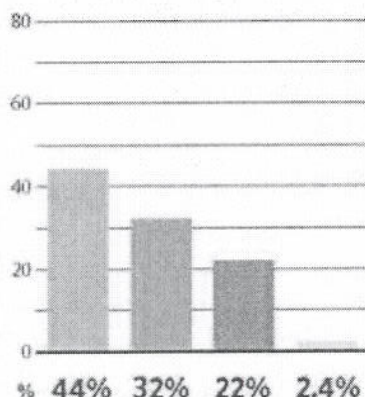
Construction of the Parramore BRT line is expected to begin this spring.

Meanwhile, in October 2013, the Minnesota Public Transit Association (MPTA) awarded its annual Management Innovation Award to the Minneapolis/St. Paul Metro Red Line BRT project as an example of a creative partnership designed to address the >>>



FUELING

Propulsion Type	Quantity
Hybrid-electric	18
CNG	13
Clean diesel	9
Trolley	1

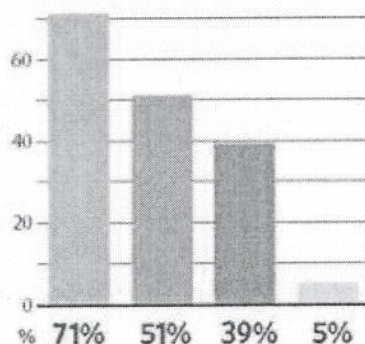


Nearly one-half of operators surveyed plan to use hybrid-electric propulsion for their vehicles, just slightly less than last year. Nearly one-third use or plan to use CNG. Clean diesel use is up by a hair, at 22%. Only one operator plans to use trolleys. (Note: Some transit authorities selected two propulsion methods, so percentages overlap.)

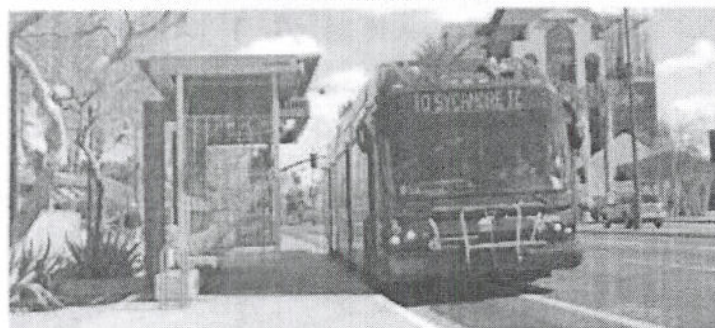


FARE PAYMENT

Propulsion Type	Quantity
Cash/Coin	29
Smart Cards	21
Magnetic Strip	16
Mobile	2



More than two-thirds of projects will collect cash/coin fares, about one-half are using smart cards and slightly more than one-third selected magnetic strip. Two systems selected mobile payment as a fare option. (Note: Some transit authorities selected two propulsion methods, so percentages overlap.)



Valley Metro's Mesa Main Street LINK BRT service began operating in 2008. It has since provided more connectivity to the light rail, schools, shopping and other attractions.

needs of transit users.

Cities such as St. Louis and Albuquerque, N.M., are currently taking a new look at possible BRT routes to shorten commutes and provide more transportation access to students.

The U.S. region reporting the highest number of BRT projects in our survey was, once again, the West Coast, with 25. Most of the projects respondents discussed are located in California—60% of West Coast projects and one-third of all projects. Projects in this region combined totaled \$924.3 million, slightly less than last year's \$1.8 billion total. Meanwhile, the total capital cost of all projects reported was \$1.8 billion.

The project reporting the highest number of vehicles is Ontario, Canada-based Brampton Transit's Zum line, with 70 buses.

Slightly more than three-quarters of respondents are using or plan to use low-floor style vehicles, which is down from last year's 91%. Three-quarters of respondents selected articulated vehicles and nearly two-thirds chose enhanced aesthetics, which is the same as last year.

Most operators reported the number of doors on their vehicles is three, at one-third, with two doors coming in a distant second option, at 20%. Twelve percent of operators said their vehicles have five doors.

Nearly one-half of operators surveyed plan to use hybrid-electric propulsion for their vehicles, just slightly less than last year. Nearly one-third use or plan to use CNG, which is on par with last year, with clean diesel use up by a hair, at 22%. Only one operator plans to use trolleys.

The most popular vehicle amenities chosen by operators were conventional transit seats and bicycle racks on the front bumper at about one-half for each. Coming in a distant third and fourth place were inside bicycle racks (14.6%) and added comfort non-reclining seats (12%).

Nearly one-half of operators selected curb-level boarding, slightly more than one-quarter chose floor-level platforms, and nearly 20% use or plan >>>

COLO. BRT PROJECT CONTROLS GROWTH, CULTIVATES DEVELOPMENT

In addition to improving mobility in the region, Fort Collins, Colo.-based Transfort's new BRT route, the MAX, will help manage growth and spur economic development.

Slated to open this May, the line is part of a strategy to increase transportation capacity to accommodate higher densities in key corridors, enabling the community to grow upward instead of outward. MAX covers that first corridor, a primary arterial through the community, **Kurt Ravenschlag**, GM, City of Fort Collins, Transfort, says.

Kurt Ravenschlag, GM of Transfort, says that the new MAX BRT service, will operate with six North American Bus Industries vehicles.



Throughout the course of construction, MAX has already created hundreds of millions of dollars of economic activity in the region.

"We're already seeing probably 20-plus projects occurring, [including] mixed-use development, residential and retail services and haven't even begun operations yet," Ravenschlag says.

Conceived in the mid-1990s, the project progressed after a few years to the development stage, securing FTA support, as well as gaining other project funding partners, including the state of Colorado and **Colorado State University (CSU)**, Fort Collins.

The \$87 million line is the single largest capital project in Fort Collins, according to Ravenschlag.

MAX will be operated by Transfort, the city's bus system. Transfort runs about 22 routes and approximately 50 fixed-route, heavy-duty buses and complementary paratransit service.

The fleet is composed of a mix of **Gillig** and **North American Bus Industries** vehicles, including the six new BRT buses.

This year the agency has an operating budget of \$10.5 million. Next year, that will increase to \$15 million due to increased funding from the City, as well as support from funding partners such as CSU; Transfort recently came to a nearly \$1 million agreement to increase services to the CSU campus.

MAX is already generating demand from the public for more service frequency, hours of service and coverage because people want more ways to connect to it.

"We're leveraging MAX to increase transit services in our entire community," Ravenschlag says. "That's why we have significant increases in funding from our city to increase services to complement MAX."

Now, the biggest challenges facing Transfort are keeping up with requests for new services, such as more night service and Sunday service, which it hasn't provided in the past, and having the rolling stock and staffing to meet the service demand.

"It's a project that has been long in the works, and we're very excited to [start operating]," Ravenschlag says.

to use bridge plates at doors.

For fare collection, more than two-thirds of projects will use cash/coin, nearly two-thirds of operators selected off-board payment, about one-half are using smart cards and/or on-board payment, and slightly more than one-third selected magnetic strip. Two systems selected mobile payment as a fare option.

Federal funding, including FTA's Very Small Starts, Small Starts, ARRA, TIGER and Congestion Mitigation and Air Quality, made up about two-thirds of the funding for projects. Local support is helping more than one-half of all projects, at 56%, and state money was awarded to one-third of all BRT lines represented.

This year's survey showed less federal funding and local support — down by 16.5% and 10%, respectively — but that could be because fewer projects were submitted this year.

However, those results do fall in line with the biggest oft-cited challenge of funding. One operator of four different projects pointed to last year's sequestration as a particular difficulty, since it delayed federal money. Closely following that was the hurdle of coordination with multiple cities, counties and other jurisdictions. Construction and limited right-of-way are less-reported but still common concerns.

The project benefits touted most frequently were cutting travel time; connecting to job centers, rail and other transit modes; supporting economic development and growing ridership.

Regarding running way features, respondents once again this year overwhelmingly chose mixed-flow arterials, at 80%, with dedicated arterials selected by one-quarter of respondents.

When asked about ITS features, more than 80% selected passenger information and signal manipulation, similar to last year. More than three-quarters chose voice announcement, while vehicle tracking came in at 70%. Nearly two-thirds are using ITS for security. Other uses included railway detection, gate control of guideway access and real-time bus arrival information. □

THE PRESS-ENTERPRISE

TRANSIT: New express bus service has slow start

MAY 12, 2014 BY [CASSIE MACDUFF](#)



An sbX bus waits at a shelter. The new service started April 28, 2014.

I took on ride on the new sbX express bus between Loma Linda and north San Bernardino on Monday, May 12.

It was a pretty nice ride.

The bus rapid transit system doesn't run exactly on schedule. More on that later. But that was a minor annoyance for my first try.

I was impressed with the driving skills of the driver on the bus I happened to board.

Samehesha Love pulled the massive, double-length bus smoothly to within an inch of the boarding platform without missing a beat. She's been driving for Omnitrans for 13 years. No wonder she's good.

The route runs from north Loma Linda to the VA hospital on Barton Road, back out to Anderson Street, up Tippecanoe Avenue, across Hospitality Lane, to E Street, over Little Mountain to a park-and-ride lot north of Cal State San Bernardino.

The ride was fine until we got to Base Line, where the newly paved center-running bus lanes end. From there, the ride gets very jarring: bump, bang, rattle, clatter, the din of sheet metal slamming against sheet metal.

I asked Omnitrans spokeswoman Wendy Williams if the old, cracked asphalt will be repaved. She said it's being considered; it wasn't part of the original \$192 million price tag. (Heaven knows the bankrupt city can't afford to repave it.)

Another fix Omnitrans needs to make is to tell riders of its regular buses on the same route that they can catch the express bus at a separate stop, often just across the street. I saw many riders waiting at the regular bus shelters watch in puzzlement as the sbX bus passed them by.

Williams said Omnitrans is trying to figure how to get the word out better. "We're surprised that more of our Route 2 riders haven't made the switch" to sbX, she said.

Even though a lot of information was put out before the launch of sbX, many people still don't know they can use their regular bus passes to ride it, she said. "We know we need to do a lot more education."

Speaking of bus passes, the sbX vehicle I was on had broken scanners at the rear and middle doors. Yet the driver who replaced Love at Inland Center stop in San Bernardino opened all three doors at each stop. He had to yell back to passengers to come to the front of the bus to scan their passes.

Why didn't he just leave the rear and middle doors closed, since people were going to have to walk all the way forward anyway? Williams said it's possible to open only the front door.

Here's the other thing that's broken in the brand-new system:

The electronic readouts on the sbX shelters that are supposed to let you know when the next bus will arrive are out of whack. The times posted, at least on the shelter by the Loma Linda park-and-ride lot where I boarded, gave bad signals.

When I arrived at the stop on Anderson Street south of Redlands Boulevard, an sbX bus was leaving. No problem, I thought. The sbX buses run every 10 minutes between 6 a.m. and 9 a.m. weekdays. I was confident another would be along in 10 minutes.

The electronic readout said the next bus would arrive in 12 minutes. OK, I could live with that.

After I stood there 12 minutes, the readout said, "Arriving." But there was no bus in sight.

A moment later, the sign changed from "Arriving" to "22 minutes." Say what?

Twenty minutes after I arrived at the sbX stop, the bus came. I took one more look at the electronic readout; it said the bus would be arriving 15 minutes.

Williams said she noticed wrong arrival times on the same Loma Linda stop the first week the service started, April 28.

It hasn't been fixed yet. Pity the poor rider who depends on the readout for arrival times.

Most alarming, I witnessed many drivers – including one motorcyclist – violating the law by driving across the bus lanes to make left turns. They had to cross three sets of double yellow lines to do it. It's extremely dangerous.

The first day of operation, an SUV was struck when its driver made an illegal left turn in front of an sbX bus. Two sbX passengers were slightly injured. One went to the hospital.

Police aren't doing any kind of focused enforcement yet, Sgt. Vicki Cervantes said. Only a handful of citations were written the first week, she said.

She has asked her motorcycle officers to keep an eye on the situation and try to educate drivers not to make the risky turns. Good idea!

sbX hasn't caught on yet. More than 15,000 people rode it the first week, when it was free. Once people had to pay, ridership fell to 1,280 the second week, Williams said.

Mustapha Koromah, one of my fellow riders, has regularly taken the bus to Cal State San Bernardino, where he's in his final year studying environmental science.

He thinks sbX is a big improvement over regular Omnitrans service; sbX is more reliable, he said.

Koromah believes sbX will become popular in the long run, as more people become aware of it and see how much faster it gets them to their destinations.

It takes him 12 minutes to get to school from the sbX stop near his home off Highland Avenue, compared to 18 to 20 minutes on the regular bus, he said.

I rode the complete circuit from Loma Linda to the turnaround north of Cal State and back. My fellow passengers included families with toddlers, college students with backpacks, pre-teens with scooters and elderly folks toting shopping bags.

For me, it was nice not to have to drive. I noticed a historic, tile-roofed building I'd never seen before. I admired the colorful mural on the walls of the historic McDonald's museum. I enjoyed breath-taking views of the mountains.

Too bad sbX doesn't go anywhere I need to be routinely. I hope the express service catches on. Then more routes will be offered.

Other
Monday, May 19, 2014



MONDAY, MAY 19, 2014

The sbX Bus Rapid Transit: A success in waiting

It may appear to be lightly used but upcoming transit infrastructure improvements are underway which should significantly boost the sbX ridership.



All Aboard! Special needs youth [take a field trip](#) aboard the sbX Green Line

Photo: Omnitrans

Omnitrans' new bus rapid transit line dubbed the sbX Green Line which has recently opened is a long-desired upgrade for San Bernardino's E Street transportation corridor. However it has been getting some hard press and continued dissent among some members of the public. The reportage is showing slow-start ridership counts which has rallied the opposition. So what's going on? It's time for some straight talk.

sbX Green Line Ridership



Photo: Omnitrans

Ever since the sbX project was approved and planned, we predicted it would mimic the LA Metro Orange Line along E Street's dedicated transit lanes and Metro Rapid along the bookends. In addition, we predicted that a significant portion of Omnitrans' existing [Route 2](#) ridership base of 3,841 daily riders for this fiscal year would shift to the sbX. The transit agency thought likewise which is the reason why Route 2's midday and rush hour service frequency during the week was reduced to 30 minutes between buses, [down from 15. The sbX runs every 10 minutes during rush hours and 15 minutes at other times.](#)

Press Enterprise Columnist Cassie MacDuff rode the bus on May 12 and [published a report](#) of her observation. The column reported that 15,000 people rode it during the first week either to get their destinations or to simply try it out. During the first week, rides aboard the Green Line were free. Once fares were implemented after week one, the paper reported that ridership fell to 1,280 for the second week.

That ridership stat was not correct. According to Omnitrans Marketing Director Wendy Williams, the 1,280 figure was not the total week two ridership, but rather the average daily ridership of the line. In fact, at the time of this post, sbX was averaging 1,327 riders per day.

More Facts -- Comparing the Ridership between sbX and Route 2:



During the opening week when sbX rides were free, an average of 3,032 daily passengers came aboard the bus. Route 2 had an average of 2,901 weekday daily passengers. The E Street corridor thus saw a net gain average of 2,092 daily riders between the sbX and Route 2. Of course, people simply wanting to try out the sbX boosted those numbers.

During the second week, Route 2 had a daily average of 2,943 riders; sbX had a 1,327 per day average. That meant Route 2 carried over 69% of the E Street transit ridership, sbX carried 31%. That also meant that just under 900 daily Route 2 riders have switched to sbX. Net gain for the whole corridor was 429.

We understand that the numbers are still very preliminary but there is big legit reason of why so many transit riders are electing to ride Route 2 instead of the sbX: The sbX currently bypasses the Fourth Street transfer hub.

The nearest sbX station is located at Court Street. The existing transfer hub is located at 4th and F Streets. That generally entices riders using the hub to transfer to/from Route 2 instead of the sbX.

No Connection...How did that happen?



According to Williams, an sbX station in operations located E Street and Rialto is also part of the proposed San Bernardino Transit Center which has already broken ground. The transit center was originally planned to open either before or during the launch of sbX. However, it was delayed and the BRT line started without it. To be fair, the transit center delays are justifiable. Coordination with SANBAG's

plans to [extend Metrolink to the transit center](#) area were the reasons. Such integration and pre-planning are generally sound policies and it is very typical for such projects to take a little bit longer. July of 2015 is the predicted opening day for the transit hub. July of 2016 is the predicted start date for the Metrolink First Mile extension to San Bernardino.



sbX Safety Outreach Example
Graphic: Omnitrans

Clearly, the sbX has a lot to gain from the inbound transfers at this multi-modal hub.

In addition Omnitrans will be working to entice Route 2 riders to switch to the sbX. Some riders don't realize that the sbX has the same Omnitrans fare policy as the local buses; some users don't even know that Omnitrans operates the sbX. The agency had deployed sbX transit ambassadors to the Route 2 bus stops to educate the riders and plans to place additional communications aboard the local line and other area buses. In addition, Omnitrans [published a story](#) of a longtime Route 2 passenger who made the switch. All of these should entice some additional riders to use the sbX instead of Route 2 while we wait for the transit center to open.

We also received this [fact sheet](#) from Omnitrans explaining how the agency will educate private motorists to stay out of the bus lanes. Law enforcement will be issuing citations to violators.

Addressing the sbX Dissenters on costs



A few days after the PE article was published, there were 8 dissenting comments posted plus a very fine rebuttal which took 4 comment slots to fill. We took some brief notes of the 12 but before we address them, we do apologize for not referencing to them directly. As of last Friday, we found that the newspaper renovated its website design which included a different engine for reader comments. Because the comments engine was changed, all of the comments we noted are no longer live for you to reference, but we'll do what we can to give you a straight report. To be clear, we're not out here to personally attack sbX opponents, but we're here to put in some straight facts for a good and productive debate.

To summarize, most of the dissenters took note of the light ridership figures and light usage of the sbX. We've already addressed how Omnitrans and SANBAG are solving this problem. In addition, some opponents had a big problem with the \$192 million project price tag. There were charges from others that the sbX was government waste. That was the view of one follower of the Redlands Tea Party Patriots who invited the PE readers to attend last Saturday's May 17 Unite IE Conference. We were looking to get some constructive criticism in from this group, but the organization could not be reached for comment.

We would like this group to talk with us because we have to give the dissenters credit on one valid point: The sbX per-mile cost.



The Sahara Express BRT in Las Vegas

The line's per-mile cost was \$3.7 million per mile.
To compare, the sbX was \$12.2 million per mile.
Photo: Federal Transit Administration

The 15.7 mile sbX was \$192 million; adding up to \$12.2 million per mile. That included all design, engineering, project management, land acquisition, corridor construction, vehicle purchase, improvements to the maintenance and operations facility and other items. About half of the costs were for construction.

We compared this stat with similar BRT systems in Las Vegas. We received the total costs from three separate BRT corridors in the Las Vegas region, courtesy of several published reports and from Kelley Mulroy, Marketing & Media Administrator of the Regional Transportation Commission of Southern Nevada. We can say up front that Las Vegas' BRT system had far less per-mile costs than the sbX.

The 7.5 mile MAX BRT which goes through North Las Vegas cost \$20 million total including the bus fleet, adding up to \$2.7 million per mile. The 9 mile SDX rapid system which is similar to the sbX which connects the Strip and Downtown was \$52 million or \$5.8 million per mile. The 12 mile Sahara Express at \$45.2 million clocked in at \$3.7 million per mile. The Sahara Express also mimics the sbX except that the bus lanes and stations are on the right side of the road instead of the left. In addition, Las Vegas' market economy as a whole is sharply better than San Bernardino's which meant that the sbX should have cost less per mile than the Vegas system. This is more evidence that costs for public works projects in California are artificially high. This is why our infrastructure and economy are generally lagging behind. By the way, the \$324 million LA Metro Orange Line spanning 18 miles cost \$18 million per mile.



Inflated public works costs certainly is a valid argument and a contributing factor to the sbX dissent that must be dealt with at the state level by the legislature. We hope this was addressed boldly at the Unite IE Conference. The PE [had coverage of the event](#). However, Omnitrans cannot be faulted nor take the blame for the high costs and rules that contribute to them. Again, that has to be dealt with at the state level. We clearly should not classify mass transit as government waste in general. The Las Vegas system clearly proves this. Mass transit infrastructure to move high volumes of people along economically and populated dense corridors without the cars is imperative. Even the Reason Foundation which promotes libertarian principles sees BRT, managed arterial roads and managed lanes as "[low-cost, high quality transportation solutions for the 21st Century](#)."

For the record, one of the PE commenters who dissented the sbX had the user name of "CALICOLAKE HOA" which may have led some readers to assume that the Calico Lakes Homeowner's Association based out of Yermo in the Barstow area was speaking out against the transit line and therefore opposed the sbX. That never happened. The tone of the poster's comments should automatically suggest so and according to Community Management Director Lyndsey Dyer of Professional Community Management, the Calico Lakes Homeowners Association took no position on the matter.

The sbX is a successful BRT in waiting



Photo: Omnitrans

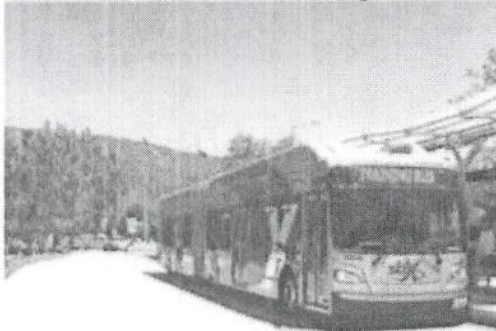
In conclusion, the robust sbX bus rapid system is a success in waiting. It is clearly not a government boondoggle. With better infrastructure, Metrolink, future express buses, and a multi-modal transit hub all on their way, the sbX will attain a strong ridership pool which will allow it to be very productive. At the same point, state lawmakers need to stop ignoring the issue of inflated statewide infrastructure costs during a soft market economy. If such costs and trivial red tape come under control at the state level and San Bernardino's market economy improves and crime decreases, the upgrades that we're waiting for will come at a faster rate. Smart growth developers will come in to develop the E Street corridor which will certainly make the sbX Green Line and its future routes a very productive means get around San Bernardino County.

Highland Community News

Thursday, May 29, 2014

HIGHLAND COMMUNITY NEWS

SBx: It's an easy ride and a 'no-brainer'



Try the new SBX

Posted: Thursday, May 29, 2014 11:05 am | Updated: 11:09 am, Thu May 29, 2014

By R.A. Contreras | [0 comments](#)

Teens relish that special time when they gain 'independence' from mom or dad. Mine came in September 1986—and it involved a bus.

How thrilled I was that I got to buy my own clothes for school and got to do it myself. So I hopped on the Route 2 and headed over to the now-closed Central City Mall, boy, did it ever feel good to be a grown up for once!

And now, some 28 years later, my love affair with Omnitrans still burns brightly. I never got tired of riding the bus. On those sweltering days (and we have many of them here), the air conditioning feels so good; the price has always been more than reasonable; and it has freed up money that would have otherwise been spent on gas, car repairs, registration, and parking fees. Plus, I have enjoyed meeting many fellow passengers and socializing, especially on the longer trips.

With the opening of the new SBx green line, things are being taken to a whole new level. The new route conveniently operates from Cal State University to Loma Linda and offers a blazing-fast service for a trip that normally by car—and headaches—could take upwards of an hour to make. Instead, the busses will be allowed to trip signals throughout the route enabling faster green lights; the commute will be chopped down to nearly half the time.

And since I am a student at CSUSB, the benefits of utilizing the SBx are paid in spades: The days I decide to drive, I can park my gas-guzzling truck in the Marshall Boulevard and "E" Street park-and-ride center, board, and be at school in a mere 7 minutes or so. Gone are wallet-shrinking gas costs, the dreaded fight for parking spaces, and outrageous parking fees. Another perk: I can access my laptop and do some last minute studying thanks to power outlets and free Wi-fi on the coaches. Have I mentioned the ride is free, every day, thanks to the Go-Smart program where most area college students "pay" by swiping their school-issued ID cards? It's a 'no-brainer', especially for us cash-strapped, stressed-out college types.

For others, the new route is beneficial. Fees will remain the same for regular bus route fares. A \$4 'All-day' bus pass that can get you anywhere from Yucaipa to Montclair is still one of the best deals out there. There is almost literally no where you cannot go throughout the greater San Bernardino area with Omnitrans' 30-plus routes that operate seven days a week.

Of course, there are those who have complained about problems with the new route: businesses have lost money during construction; there are closed-off left hand turn lanes; and the fuel storage facility at the Omnitrans' Fifth Street facility is allegedly hazardous. Perhaps such contentions have validity. What I see, though, are the hundreds of dollars I will save on gas expenses alone and trips that will take minutes instead of hours.

If you have never considered riding the bus, why not try the new route now? The reality is that SBx is here to stay. You will undoubtedly pocket extra time and money, ride comfortably, and do your part for the environment. And who knows, your own love affair with bus-riding might begin.

R.A. Contreras is a free-lance writer and graduate student at Cal State University, San Bernardino

Sun
Sunday, June 01, 2014

THE SUN

Mass Transit Systems

Omnitrans seeks input on proposed West Valley bus line

By Staff Reports POSTED: 06/01/14, 6:04 PM PDT

A dedicated bus line through the western part of the San Bernardino County is in the works, but the agency planning it wants public input.

Omnitrans is planning what officials are calling a "premium transit service" rapid transit bus line that would go along the Sierra Avenue, Foothill Boulevard, Milliken Avenue and Holt Boulevard corridors.

The idea would be to cut down on traffic and reduce travel times to major regional destinations, including Metrolink stations.

The agency is inviting the public to a series of meetings from Tuesday, Wednesday and Thursday in Ontario, Rancho Cucamonga and Fontana.

The line would be similar to the recently opened *sbX* transit line that launched last month in San Bernardino, shuttling riders from northern San Bernardino to Loma Linda.

The "West Valley Connector" would offer service every 10 to 15 minutes, with stops spaced farther apart than local bus service, with transit signal priority, security cameras at stops and emergency phones, according to Omnitrans.

It would travel through Fontana, Rancho Cucamonga, Ontario, Montclair and Pomona, and would connect hubs such as Kaiser Permanente, Victoria Gardens, Ontario Mills, Citizens Business Bank Arena, the Ontario Convention Center and LA/Ontario International Airport, Ontario Mills. Stops would also include Metrolink commuter stations in Fontana, Rancho Cucamonga and Pomona.

The public meetings are from 4 to 7 p.m. on Tuesday, at the Ontario Senior Center, 225 E. B Street, Ontario; from 4 to 7 p.m. on Wednesday, at North Hills Community Church, 10601 Church St., Suite 118, Rancho Cucamonga. Informal rider information sessions will be from 7 to 10 a.m. on Tuesday at the Fontana Transit Center, and 3 to 6 p.m. on Thursday at Ontario Mills Transfer Center.

More information is available at omnitrans.org.

Public comments can also be submitted by phone at 909-379-7250.

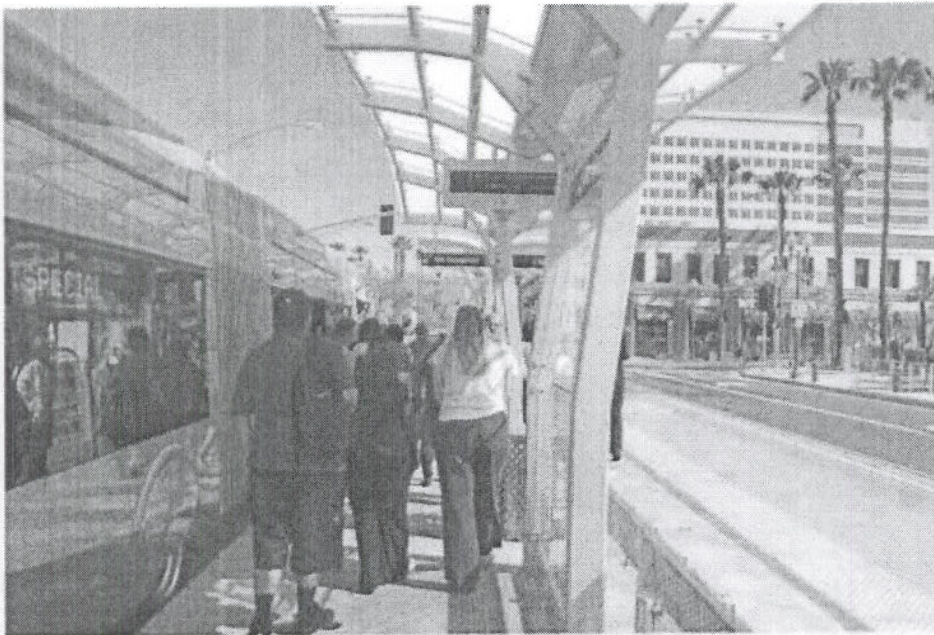
Other
Tuesday, June 03, 2014

STREETSBLOG LA

Tuesday, June 3, 2014 [54 Comments](#)

Guest Opinion: The Future of Los Angeles is Bus Rapid Transit

by [Daniel Jacobson](#)



Omnitrans' sbX in San Bernardino is the first on-street Bus Rapid Transit (BRT) system in Southern California to feature dedicated on-street bus lanes and rail-like stations. Full-feature on-street BRT represents a key opportunity for transit expansion in Los Angeles County. Photo: Omnitrans

Los Angeles is finally on its way toward realizing the dream of a regional rapid transit system. Five rail lines are simultaneously under construction, and there is renewed momentum to fund another round of transit expansion on the 2016 ballot. Move L.A. recently unveiled a [Strawman Proposal](#) for "Measure R2" to accelerate the completion of the remaining Measure R projects and offer a new vision for transit, highway, and complete streets improvements across Los Angeles County.



Move LA's Measure R2 "Strawman Proposal" features a number of possible rail expansions, but does not identify specific bus and BRT improvements. Source: [Move LA](#)

For Angelenos and transit nerds everywhere, there is a lot to get excited about. The centerpiece of Move LA's vision is a \$27 billion expansion of Los Angeles' rail network (right, and also mapped below). Other features of note include \$9 billion toward a "Grand Boulevards" program for complete streets improvements on the region's automobile-oriented thoroughfares, and \$3.6 billion toward active transportation projects. Although Move LA's vision is just an early draft, a measure along these lines could transform the region—on par with the development of the expansive freeway network half a century ago.

Nevertheless, there's something missing.

Move LA's Measure R2 proposal does not effectively articulate one of the most critical ingredients to reshaping mobility in Los Angeles County: a spectrum of bus improvements, including bus rapid transit (BRT), to enhance transit service throughout the region.

Los Angeles already has many features of a [great transit metropolis](#), but its greatest challenge is one of geometry: even after another \$27 billion rail investment, only a handful of cities, neighborhoods, and corridors will have convenient rail access. For most Angelenos, including many in densely-populated, growing, or transit-dependent areas, buses will continue to serve as the only accessible mode of transit. Rather than rehashing [bus vs. rail debates](#), Los Angeles must embrace upgrades to its bus system (the nation's second-busiest) in tandem with rail expansion to reach a level of transit abundance that brings frequent, quality service to as many people as possible.

A spectrum of bus improvements are necessary. In many locations, bus stop upgrades to provide adequate shelters, security, and real-time arrival information may be sufficient when combined with frequent service. For other locations, BRT—dedicated lanes and more robust rail-like infrastructure—is necessary to provide quality service and room for

growth. Yet, details on bus improvements in Move LA's Measure R2 proposal are thin: the proportion of funds allocated to transit operations remains constant, and bus enhancements are mentioned only briefly under the Grand Boulevards program.

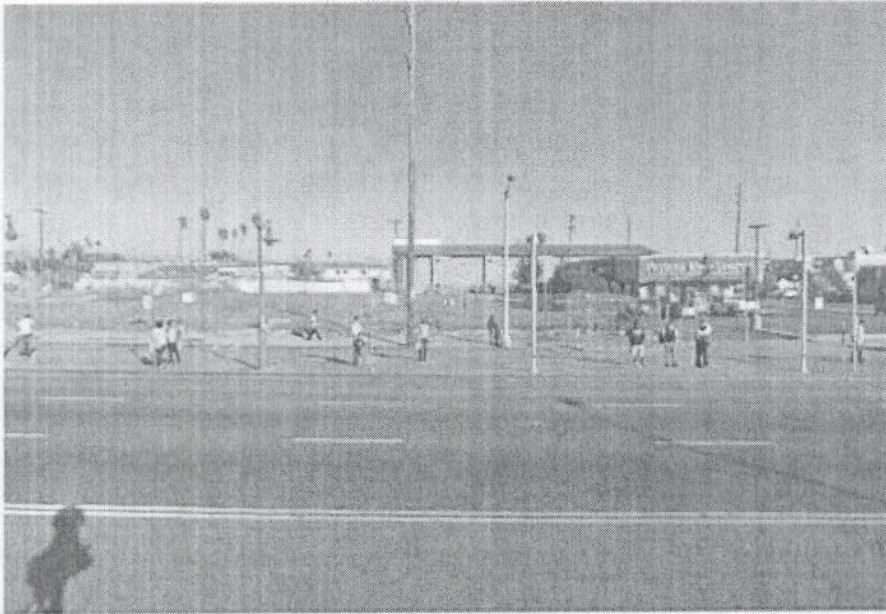
The lack of a comprehensive regional BRT vision in Move LA's proposal is indicative of the region's cautious approach to reallocating street space for buses and other users. While Metro has implemented two (mostly) off-street BRT lines—the Orange and Silver Lines—and an extensive Rapid network, the on-street implementation of BRT has been limited. A handful of “peak” hour bus lanes (7-9am and 4-7pm) have been implemented on Wilshire, Sunset, and Figueroa, and similar treatments have been recommended on nine additional corridors in Metro's Countywide Bus Rapid Transit and Street Design study. However, Metro has currently no plans for more comprehensive bus improvements, such as all-day dedicated bus lanes and rail-like stations.

The city of Los Angeles is effectively leading the charge for bus improvements and more advanced BRT features as it develops concepts for a Transit-Enhanced Network, but the city lacks funds to implement these improvements without its own citywide ballot measure. The city is also tied to a problematic on-street advertising contract which has limited its bus stop amenities.

A step-by-step approach to BRT implementation makes sense to deliver quick benefits to riders, but it risks setting the bar too low and degrading the benefits of BRT. What Metro presently brands as BRT offers only slight improvements over Rapid service: for example, bus lanes on Wilshire are only active for five hours per day and will be absent in Westwood and Beverly Hills, which opted out. Even after full implementation Metro's countywide BRT plan, none of the designated corridors would meet the “Basic BRT” standard set by ITDP or come close to being on-par with Metro's rail facilities.

More than three quarters of Metro's ridership is on buses, and many more people choose not to ride because the service and amenities are inferior to other alternatives: shelters, safety features, real-time arrival information, and way-finding elements are often lacking, even at the busiest stops. Frequency, speed, and reliability can be all-day issues given the ever-present threat of traffic congestion.

More robust bus improvements are necessary. These improvements not only benefit existing riders, they also makes transit a more useful mobility option for millions of people.



This Rapid/Local stop on Vermont at Manchester in South LA serves approximately 1,300 people per weekday (more than many light rail stations) but it lacks basic facilities such as shelters and is blanketed with trash. Source: Google Streetview



Santa Monica's transit provider, Big Blue Bus, is in the process of upgrading its most heavily used stops to include shelters, seating, real-time arrival information, and way-finding features. Source: Big Blue Bus

What could a fully developed BRT network look like?

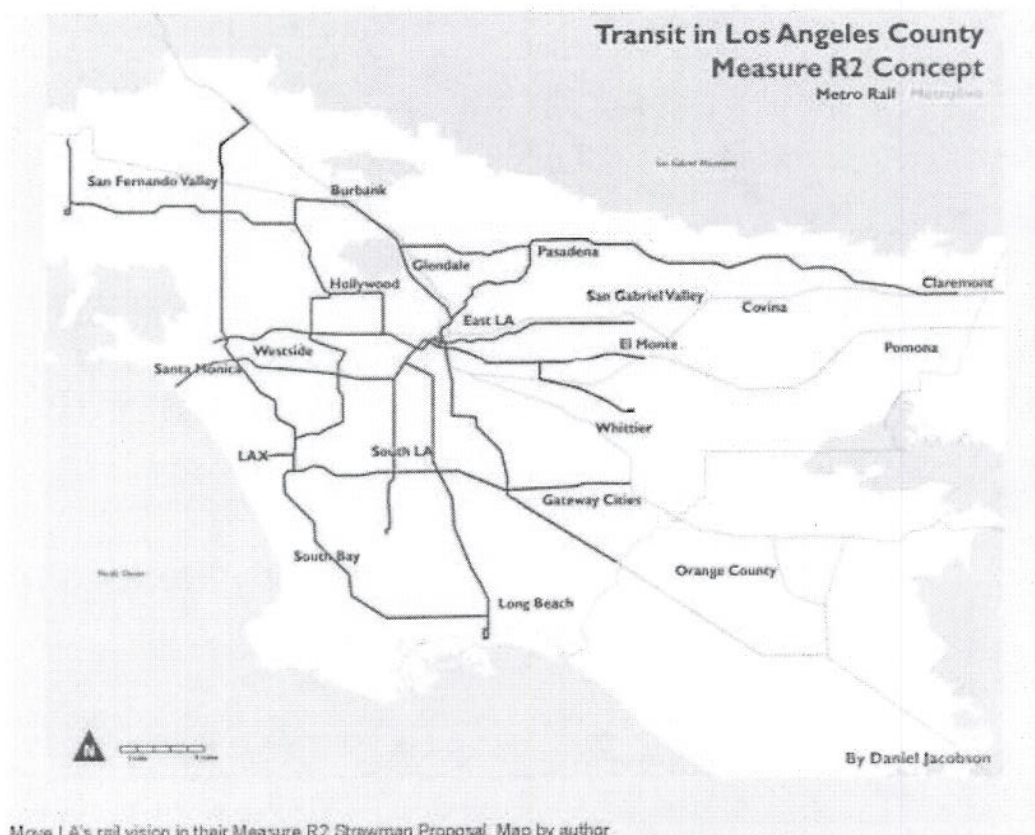
Metro currently operates 400 miles of Rapid service, while other local providers have their own. In total, roughly 500 miles of Rapid services are potential candidates for improvements. 500 miles of true BRT is likely to be cost prohibitive, but it may be conceivable to imagine a mix of improvements such as:

- 100 miles of "comprehensive" BRT (and complete streets enhancements) that could qualify under the ITDP standards (around \$4 billion at \$40 million/mile – assuming the cost of Metro's East San Fernando Valley BRT project)
- 200 miles of BRT-lite "Select Bus" service featuring dedicated lanes and targeted bus stop and streetscape improvements (about \$2 billion at \$10 million/mile – assuming double the cost of Metro's Wilshire BRT project)
- 200 miles of signalization, bus stop upgrades, and minor street improvements (roughly \$500 million at \$2.5 million/mile).

All together, a fully-upgraded Rapid/BRT network could cost in the ballpark of \$6-7 billion—almost the total budget for the Grand Boulevards program, for which may feature additional non-BRT projects as well. This order-of-magnitude estimate doesn't factor in improvements to the local bus network or associated increases in operating cost to maintain appropriate all-day frequencies for a core transit service.

Despite the cost, a robust BRT investment appears doable within the framework of Move LA's proposal combined with a mix of local, regional, state, and perhaps federal funds.

For abstract illustrative purposes only, consider the conceptual rail network from Move LA's Strawman Proposal overlaid with a countywide BRT concept, which assumes upgrades to most existing Rapid lines plus the addition of new BRT services.



Move LA's rail vision in their Measure R2 *Strawman* Proposal. Map by author

to embrace bus improvements and BRT as core elements of its 21st Century transit vision to foster abundant, high quality transit service for all.

Daniel Jacobson is a transportation consultant working with cities and transit agencies to improve transit, bicycle, and pedestrian mobility in California. He is a transportation planner at URS and a car-free resident of Los Angeles. (The views expressed in this article are his own.)

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Faster transit down the road for San Bernardino County's West End

*By Greg Cappis, Inland Valley Daily Bulletin
Saturday, June 7, 2014*

sbsun.com

San Bernardino County Sun (<http://www.sbsun.com>)

Faster transit down the road for San Bernardino County's West End

Imagine a fast bus line that will stop only at major hubs on San Bernardino County's West End – places like Kaiser Permanente, Metrolink depots, the Ontario Convention Center...

Omnitrans officials are.

By late summer or early fall, they are planning on bringing to the transportation agency's board a \$25 million plan to get people to places faster.

The West Valley Connector, they say, will help reduce congestion in cities such as Fontana and Ontario — and Pomona as well.

"If the real enemy is congestion, then the best transit system in the world won't eliminate congestion," said James Moore, professor of engineering and director of the transportation engineering program at USC. "But if the goal is mobility for more people, then this is a very smart move."

It's a move already happening farther east, where the new sbXcq line from north San Bernardino to Loma Linda is up and running after years of planning and construction.

On Friday, an express bus blitzed past two men waiting at the blue benches of a traditional Omnitrans bus stop.

The coach swung left onto San Bernardino's Hospitality Lane and stopped between restaurants and a grocery store, alongside a newly constructed bus stop with silver benches, the ground level with the floor of the bus.

An LED screen hanging from a sun shade informed riders the next two buses were set to arrive in 10 and 14 minutes. Security cameras overlooked a fare box where single-ride passes can be purchased for \$1.50 via a credit card.

This stop is part of the sbX Green Line, connecting Loma Linda University and Cal State San Bernardino with stops in San Bernardino.

Similar, New Age bus stops are on pace to be erected in the San Bernardino County's West End, delivering riders from Fontana to Pomona.

Omnitrans hosted a series of public meetings last week, including one Wednesday evening at North Hills Community Church in Ontario, where consultants answered residents' questions and poster boards displayed the locations of 24 bus stops that will be built if Omnitrans' board of directors approves the West Valley Connector project when it is presented to the board in late summer or in the fall.

The project would route riders from Kaiser Permanente Medical Center in Fontana, up Sierra Avenue to Foothill Avenue, stopping at a community college and shopping centers. The express bus would then head south, loading and unloading passengers at L.A./Ontario International Airport and the Ontario Convention Center before heading west on Holt — Boulevard in San Bernardino County but Avenue in Los Angeles County — to the Pomona Transcenter, where another express bus, run by Foothill Transit, departs to Los Angeles.

The West Valley project and sbX are the first two of 10 rapid bus routes Omnitrans is planning to reduce traffic congestion in the Inland Empire and provide more public transit options to residents as the region's population continues to increase.

Omnitrans officials are calling the West Valley route Bus Rapid Transit Light, because it won't have dedicated lanes, like the sbX line in San Bernardino. Instead it will run along two of the agency's busiest routes — 61 along Holt and 66 on Foothill Boulevard, which will continue to operate — in regular traffic lanes, but with fewer stops.

Funding for the route relies on the sale of property owned by Omnitrans and a nod from the Federal Transit Administration.

"The \$25 million figure is contingent upon the sale of property Omnitrans owns in Rancho Cucamonga, originally purchased for a proposed mid-Valley facility," Omnitrans spokeswoman Nicole Ramos said in an email exchange. "The property has been appraised at that figure, and the proceeds of that sale will be utilized to fund the West Valley Connector project, with FTA's approval (already secured)."

Cities, like Ontario, are implementing mass transit systems into their general plan, according to Ontario Councilman Alan Wapner, who is chairman of the Omnitrans board.

Ontario, he said, has widened parts of Holt and is looking at rezoning parcels of land for transit-oriented development.

Wapner would like to see the West Valley route have dedicated lanes, which would increase the cost by about \$200 million, money the transit agency doesn't have.

But the West Valley route could be upgraded in the future to either have dedicated lanes or be transformed into a light-rail system as funds become available.

Omnitrans, said Moore, "and the communities it's serving are pointed in exactly the right direction."

URL: <http://www.sbsun.com/general-news/20140607/faster-transit-down-the-road-for-san-bernardino-countys-west-end>

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THE SAN BERNARDINO SUN

June 10, 2014

Letters

sbX bus line a benefit for San Bernardino

My wife, Dee, and myself rode the new sbX bus line on opening day — the entire 16-mile route. What a pleasure to see something so positive in our deteriorating city.

First, the work included upgrading the appearance of most of our businesses on E Street with new sidewalks, landscaping, and newly paved streets from Base Line on down, and cleaning up weed-filled vacant lots for four of the park-and-ride areas.

The 16 boarding stations were well lit with security cameras, trash cans, bike parking, and everything needed to make it safe and convenient, including bus passes and schedules.

There is no waiting, since every 10 minutes another bus comes by to pick up and drop off passengers. On the deluxe new buses there are accessible facilities, interior bike racks, spacious seating, and the latest in WiFi hook-ups for the Internet at no extra charge. Now the elderly, students, handicapped people, and those who can't afford expensive gas prices, can travel from Palm and Kendall avenues to Cal State San Bernardino, Stater Bros., drug stores, the movie theater, baseball stadium, swap meet, mall, McDonald's Museum, Hall of Records, restaurants and Home Depot on Hospitality Lane, then

over to Loma Linda University Medical Center, the Children's Hospital, and veterans' hospital without any parking issues.

Since there are no health food stores in San Bernardino, we went shopping at a Loma Linda health food store and got right back on the bus next to the store. The bus is nice to use for visiting friends in the hospitals or for your own doctor's appointments.

The bus line also created many new jobs and will increase sales for many local businesses, all a positive for San Bernardino to now look more like an upscale city. San Bernardino and Loma Linda only paid for 4 percent of all the cost of this. I'm sure there will be some issues in the future with graffiti and vandalism, but there are cameras everywhere at each boarding station and in the parking lots as well as inside the buses. Streets do need to be repaved north of Base Line for a better ride.

— *Steve Portias, San Bernardino*

ITEM # F1

DATE: July 2, 2014

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

FROM: P. Scott Graham, CEO/General Manager

SUBJECT: CEO/GENERAL MANAGER'S REPORT

Attached are the Key Performance Indicators (KPI) for the sbX through June 24, 2014. These KPIs will be provided on a monthly basis for the first six months of service, and will be provided quarterly, along with the Agency Management Report and other ridership/revenue statistics, thereafter. Please note that the ridership numbers on the sbX line will be provided after the Automatic Passenger Counters (APCs) have been installed on the articulated coaches.

In accordance with Omnitrans' Procurement Policy 7000, Paragraph 5, Asset Disposition, Omnitrans will be transferring two Access buses to Valley Transportation Services (VTrans) for use in its vehicle loaner program. These vehicles are no longer in service, have reached the end of their useful life (7 years and/or 200,000 miles) and are fully depreciated.

SANBAG's Director of Rail and Transit Services Mitch Alderman will be presenting an update on the status of the San Bernardino Transit Center.

Outreach events in May included: San Bernardino County Schools Family and Latino Book Festival at Cal State, Yucaipa Music & Art Festival, Travel Training Bus at Summit High School in Fontana, and the Quakes Game in Rancho Cucamonga. sbX Ambassadors were also out at sbX Stations and onboard the bus, as well as at the 4th Street Transfer Center, at Baseline and at Highland to attract Route 2 riders to the sbX line.

PSG:VD

sbX Key Performance Indicators (as of 6/23/2014)

Topic	Measure	Target	Actual	Status
Productivity	Passengers per Hour	Green: 40; Yellow: 35; Red: 30	11.0	May 2014
Cost Efficiency	Farebox Recovery Ratio	Green: 30%; Yellow: 25%; Red: 20%	8.26%	May 2014
Reliability	Headway Adherence	90% of trips spaced ±3 minutes of scheduled headway	54%	8 th week.
Runtime	Median One-Way Runtime	47 minutes	53.5	8 th week; trending downward since launch
Customer Satisfaction	Complaints per 100,000 boardings	<10 complaints per 100,000 boardings	30 complaints / 64,188 boardings	1 st eight weeks
	Compliments per 100,00 boardings	>1 compliments per 100,000 boardings	2 commendations / 64,188 boardings	1 st eight weeks
Safety	Preventable Accidents per 100,000 miles	<1 per 100,000 miles	0.91 (1 in 108,701)	1 st eight weeks (Pending review)
Attendance	Driver Attendance	<6 absences per year per operator	0	1 st eight weeks

ITEM # F2

DATE: July 2, 2014

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

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Donald Walker, Director of Finance

SUBJECT: DISPOSITION OF 28.8 ACRE PROPERTY LOCATED IN RANCHO CUCAMONGA, CALIFORNIA

FORM MOTION

Authorize the Chief Executive Officer/General Manager to proceed with the disposition of the 28.8 acre property located in Rancho Cucamonga, California (Mid-Valley), and approve the Professional Services Agreement between Omnitrans and the San Bernardino County Real Estate Services Department (RESO) for an amount not to exceed \$25,000.

This item was reviewed by the Administrative & Finance Committee at the June 12, 2014 meeting, and recommended to the Board of Directors for approval. The Professional Services Agreement was not available for presentation to the Administrative & Finance Committee.

BACKGROUND

Omnitrans is proposing sale of the 28.8-acre property located in Rancho Cucamonga, CA, which was purchased with the intention of paratransit expansion and construction of a new vehicle maintenance facility. Current projections no longer show a need for an expansion of the size and capacity anticipated for the 28.8 acre property in the foreseeable future. The property was purchased in May 2001 for \$5,863,786 consisting of 77.2% federal funds (\$4,525,230) and 22.8% local funds (\$1,338,556).

As required by the Federal Transit Administration (FTA), prior to the disposition of real property purchased with FTA funds, an appraisal and a review appraisal of the Mid-Valley was prepared. The appraisals were completed in January 2014 and estimate the value of the Mid-Valley property at \$21.3 million.

Upon review of the appraisals, Omnitrans received approval to sell the Mid-Valley property, with the proceeds from the sale to go towards another capital project, the West Valley Connector Corridor, from the FTA on May 12, 2014.

Omnitrans proposes to enter into a Professional Services Agreement with the County of San Bernardino Real Estate Services Department for the sale of this property. Once the Agreement is approved by the Board of Directors, the County will have to advertise the property as excess property for 60 days to governmental agencies. If there is no interest in purchasing the property within that 60 day period, the next step would be to advertise the property for sale at auction for 45 days to the public.

Omnitrans further proposes to use the net proceeds from the sale of the Mid-Valley property towards (1) the West Valley Connector Corridor – a rapid bus line from Fontana, CA to Pomona, CA; and (2) the purchase of a three to five acre property to accommodate the overflow of coaches and support vehicles associated with the West Valley Connector Corridor.

The Rapid line (similar to the sbX Green Line, but without dedicated transit lanes or median stations) is the initially preferred alternative that resulted from the sbX Holt Boulevard/4th Street Corridor Alternatives Analysis study funded by the FTA in 2011. The West Valley Connector Corridor project is the first unconstrained capital project listed in the OmniConnects FY2015-FY2020 Short Range Transit Plan.

The Alternatives Analysis summary report will be presented to the Plans and Programs Committee and the Board of Directors in the next few months, along with more detail about project costs, scope, and definition. Omnitrans is developing the scope of the project based on a realistic funding and operating plan, working in collaboration with the project development team made up of the five cities along the corridor (Fontana, Rancho Cucamonga, Ontario, Montclair, and Pomona), as well as regional stakeholders such as the Los Angeles World Airports (Ontario Airport management), Ontario Mills, Metrolink, LA Metro, and Foothill Transit Agency. The results of the public outreach meetings held for the project on June 3-5, 2014, will also be presented to the Plans and Programs Committee and the Board of Directors.

RECOMMENDATION

Recommend authorizing the Chief Executive Officer/General Manager to proceed with the disposition of the 28.8 acre property located in Rancho Cucamonga, California (Mid-Valley), and approve the Professional Services Agreement between Omnitrans and the San Bernardino County Real Estate Services Department. Approval of this item will support Omnitrans' mission of providing the San Bernardino Valley with comprehensive mass transportation services which maximize customer use, comfort, safety, and satisfaction while efficiently using financial and other resources, in an environmentally sensitive manner.

PSG:DJW

Attachment: Professional Services Agreement

**PROFESSIONAL SERVICES AGREEMENT
FOR SERVICES UNDER \$50,000**

FOR

REAL PROPERTY DISPOSITION SERVICES

BETWEEN

OMNITRANS

AND

COUNTY OF SAN BERNARDINO

PROFESSIONAL SERVICES AGREEMENT OMNITRANS

This Professional Services Agreement is made and entered into by and between OMNITRANS, and the County of San Bernardino, a political subdivision of the State of California (“CONTRACTOR”), with references to the following facts:

RECITALS

WHEREAS, OMNITRANS is in need of the professional services offered by CONTRACTOR; and,

WHEREAS, CONTRACTOR has offered evidence of having the relevant specialized training and/or experience and/or knowledge and is interested in providing the scope of work as set forth herein, including any attachments hereto; and,

WHEREAS, this Agreement is effective only upon the authorization of the Board of Directors for OMNITRANS;

NOW THEREFORE in consideration of the mutual promises, covenants and conditions hereinafter contained, the Parties hereto mutually agree as follows, and in any exhibits or attachments attached hereto and incorporated herein by reference:

1. SERVICES

A. DESCRIPTION OF SERVICES.

- a. CONTRACTOR shall provide real property disposition services to OMNITRANS, with such services as set forth in Attachment A, attached hereto, and incorporated herein by reference.
- b. CONTRACTOR shall provide real property acquisition services to OMNITRANS, with such services as set forth in Attachment A, attached hereto, and incorporated herein by reference.

B. SCOPE OF SERVICES. CONTRACTOR shall furnish labor necessary to perform in a complete, skillful and professional manner all those services described in Attachment A.

2. PERIOD OF PERFORMANCE

- A. It is mutually agreed and understood that the obligations of OMNITRANS are contingent upon the availability of state and federal funds. In the event that such funds are not forthcoming for any reason, this Agreement is rendered null and void, and OMNITRANS shall immediately notify CONTRACTOR in writing. This Agreement shall be deemed terminated and of no further force and effect immediately on OMNITRANS’S notification to CONTRACTOR. In the event of

such termination, CONTRACTOR shall be entitled to reimbursement of costs in accordance with Section 3 (COMPENSATION).

- B. This Agreement shall be effective as of June 10, 2014, and shall continue in effect through June 9, 2015, unless terminated as stated above, as specified in Section 8 (TERMINATION PROVISION), or in the event the maximum amount of this Agreement is exceeded, as set forth in Section 3. D. (COMPENSATION)

3. **COMPENSATION**

In consideration of services provided by CONTRACTOR pursuant to this Agreement, CONTRACTOR shall be entitled to receive payment by OMNITRANS as follows:

- A. COMPENSATION for services rendered shall be paid by OMNITRANS upon their review and approval of a properly presented invoice or bill for services performed as set forth in Attachment A.
- B. OMNITRANS shall make payments to CONTRACTOR as outlined in Attachment B, attached hereto and incorporated herein by reference. OMNITRANS shall compensate CONTRACTOR within thirty (30) days of receipt of a complete invoice from CONTRACTOR.
- C. Payment shall be made “net-30” terms from the completion date of any service as noted above.
- D. The compensation payable under this Agreement will be FIFTEEN THOUSAND AND 00/100 DOLLARS (\$15,000.00), provided, however, that if delays arise that require additional time and resources and such delays are beyond the reasonable control of CONTRACTOR, OMNITRANS shall increase the compensation by an additional TEN THOUSAND AND 00/100 DOLLARS (\$10,000.00) for total compensation not to exceed TWENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$25,000).

4. **INDEPENDENT CONTRACTOR**

It is understood and agreed that CONTRACTOR is an independent contractor and that no relationship of employer-employee exists between the parties hereto. Neither CONTRACTOR nor CONTRACTOR’s officers, agents, employees or subcontractors, shall be entitled to any benefits payable to employees of OMNITRANS including Worker’s Compensation Benefits.

5. **INDEMNIFICATION**

- A. To the extent provided by law, CONTRACTOR shall indemnify, defend and save harmless OMNITRANS, its officers, employees, servants, volunteers, and agents from any and all claims, losses or liability for personal injury or property damage

due to any active negligence or willful misconduct by CONTRACTOR in connection with this Agreement.

- B. To the extent provided by law, OMNITRANS shall indemnify CONTRACTOR, its officers, employees, servants, volunteers, and agents from any and all claims, losses or liability for personal injury or property damage due to any active negligence or willful misconduct by OMNITRANS in connection with this Agreement.
- C. In the event that either party is determined to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under this Agreement, the party shall indemnify the other to the extent of its comparative fault.

6. **INSURANCE**

Without limiting the indemnification obligations set forth in this Agreement, each party represents it is either an authorized self-insured public entity or has procured insurance coverages for purposes of Professional Liability, General Liability, Automobile Liability and Workers' Compensation; and warrant that through their respective programs (whether procured or self-insured), they have adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this Agreement.

7. **REPORTS**

- A. Furnished reports, as applicable, shall be provided as outlined and identified in Attachment A.
- B. Upon request of OMNITRANS, CONTRACTOR agrees to furnish to OMNITRANS copies of work papers, schedules or other work products related to this Agreement.

8. **TERMINATION PROVISION**

- A. Either party may terminate this Agreement, without cause, upon thirty (30) days written notice served upon the other party.
- B. If, for any reason, this Agreement is terminated prior to full completion of services, CONTRACTOR agrees to immediately furnish to OMNITRANS all documents related to services rendered under this Agreement.
- C. Should OMNITRANS determine that there is a basis for termination for cause, such termination shall be effected upon **five (5)** days written notice to CONTRACTOR.

9. **ASSIGNMENT AND DELEGATION**

No contract or agreement shall be made by CONTRACTOR with any party for the furnishing of any of the work or services described herein, and in Attachment A hereto, and this Agreement shall not be assigned by CONTRACTOR, either in whole or in part, without prior written consent of OMNITRANS, as approved and authorized by the Board of Directors for OMNITRANS. This provision shall not require the approval of contracts or agreements for the employment between CONTRACTOR and personnel that have been specifically named in this Agreement or in any attachments hereto.

10. **ALTERATION AND/OR AMENDMENT**

No alteration, amendment, or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

Only the Board of Directors for OMNITRANS may authorize any alteration or revision of this Agreement on behalf of OMNITRANS. The parties expressly recognize that OMNITRANS's personnel, including the CEO/General Manager of OMNITRANS are without authorization to either change or waive any requirements of this Agreement.

11. **NOTICES**

All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted one day after their deposit in the United States mail, postage prepaid:

SELLER:

Scott Graham
CEO/General Manager
Omnitrans
1700 W. Fifth Street
San Bernardino, CA 92411
(909) 379-7260

CONTRACTOR:

Terry W. Thompson
Director, Real Estate Services Department
County of San Bernardino
385 North Arrowhead Avenue, 3rd Floor
San Bernardino, CA 92415
(909) 387-5252

or to such other address(es) as the parties may hereafter designate.

12. **LICENSES**

CONTRACTOR shall maintain any professional licenses required by the laws of the State of California at all times while performing services under this Agreement.

13. **WORK PRODUCT**

All reports, findings, data or documents compiled or assembled by CONTRACTOR under this Agreement becomes the property of OMNITRANS, and shall be transmitted to OMNITRANS at the termination of this Agreement.

14. **SEVERABILITY**

In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

15. **WAIVER**

Any waiver by SELLER of any breach of any one (1) or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same term or of any other term herein.

16. **GOVERNING LAW**

- A. The provisions of the Government Claims Act (Government Code Section 900, et. Seq.) must be followed first for any disputes under this Agreement.
- B. All actions and proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the state or federal (if permitted by law and a party elects to file an action in federal court) courts located in the County of San Bernardino, State of California.

17. **DISALLOWANCE**

In the event CONTRACTOR receives payment for services under this Agreement which are later disallowed for nonconformance with the terms and conditions herein, CONTRACTOR shall promptly refund the disallowed amount to OMNITRANS on request. OMNITRANS retains the option to offset the amount disallowed from any payment due to CONTRACTOR under this Agreement, or under any other contract or agreement between CONTRACTOR and OMNITRANS.

18. **LIMITATION OF LIABILITY**

In no event shall either party be liable for consequential, indirect, or incidental damages, including, without limitation, lost profits, arising out of the services provided under this Agreement.

19. **ENTIRE AGREEMENT**

This Agreement, including all attachments and manuals, which are hereby incorporated in this Agreement, supersedes any and all other agreements, promises, negotiations or representations, either oral or written, between the parties with respect to the subject matter and period governed by this Agreement and no other agreement, statement or promise relating to this Agreement shall be binding or valid.

20. **CERTIFICATION OF AUTHORITY TO EXECUTE THIS AGREEMENT**

CONTRACTOR certifies that the individual signing below has authority to execute this Agreement on behalf of CONTRACTOR, and may legally bind CONTRACTOR to the terms and conditions of this Agreement, and any attachments hereto.

(THE BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties hereto have signed this Professional Services Agreement as set forth below.

COUNTY OF SAN BERNARDINO:

OMNITRANS:

By: _____
Janice Rutherford, Chair,
Board of Supervisors

By: _____
Scott Graham
CEO/General Manager

Date: _____

Date: _____

Attest:

By: _____
Chair, Omnitrans Board of Directors

LAURA H. WELCH
Clerk of the Board

By _____
_____, Deputy

Date: _____

Attest: _____
Secretary

Approved as to Form:

Date: _____

JEAN-RENE BASLE
County Counsel

Approved as to Form:

By: _____
Robert F. Messinger, Deputy County Counsel

By: _____
Counsel for Omnitrans

Date: _____

ATTACHMENT A

SCOPE OF SERVICES

COUNTY OF SAN BERNARDINO

SURPLUS PROPERTY DISPOSITION AND REAL PROPERTY ACQUISITION

Omnitrans
Property Address
APN:

Essential Procedures to comply with applicable California Government Code for **DISPOSITION** of Real Property:

I. Obtain Appraisal: Appraisal has been obtained by Omnitrans and will be provide to RESD for purposes of surplus disposition.

II. Surplus Declaration (Omnitrans)

- 1) Omnitrans provides a CEQA review relative to the surplus property declaration.
- 2) Omnitrans Board declares property surplus to the needs of Omnitrans by adopting a resolution declaring as such and in accordance with California Government Code Section 25526 – adoption requires a two-thirds vote by the members and/or governing board.
- 3) Appropriate posting of the resolution in accordance with California Government Code Sections 25528 and 6063.
- 4) Action will include approving the CEQA finding and the appraisal thereby directing the property to be sold through public disposition procedures.
- 5) *Note:* The Board can authorize starting the minimum bid below the appraised value if so authorized in this board action; otherwise, minimum bid is the appraised value.

(RESD can provide some sample language to the Board action item to ensure we receive the necessary clearances and authorizations to proceed with the surplus disposition and bid procedure.)

III. Bid Process (RESD)

- 1) After the property is declared surplus, the property's availability is sent to all qualifying government entities and non-profits in accordance with Government Code Section 54220 *et seq.* The qualifying agencies have 60 days to respond and agree to purchase the property at the appraised value. If none respond, then the property shall go to bid in accordance with applicable statutory requirements.
- 2) Prepare bid package and flyers for distribution.
- 3) Perform all legal and/or classified advertising; retain tear sheets.

- 4) The availability of the property, including the date to open sealed proposals, location for same, minimum bid price, contract terms, etc. and is distributed, marketed, published as deemed necessary for appropriate exposure of the building.
- 5) RESD sets up the public meeting at the designated site; mailed in proposals are opened, calls for oral bids are made, all bids are recorded, and the bidding closes to the successful highest bidder.
- 6) Omnitrans requests Board approval of successful bid (board action required).
- 7) RESD opens escrow, manages it until the deed is recorded and funds are dispersed to Omnitrans.

Necessary Information for disposition (Omnitrans provides RESD):

- ❖ Current Preliminary Title Report
- ❖ Disclosure of any and all relevant real estate matters
- ❖ Environmental Reports/Assessments
- ❖ Information on any written or verbal pending offers and/or leases
- ❖ CEQA review
- ❖ Appraisal and Appraisal Review

Necessary Information for disposition (RESD provides Omnitrans)

- ❖ Guidance through the adoption of the resolution to declare surplus
- ❖ Guidance through CEQA review, if necessary
- ❖ Contract for successful buyer (RESD can provide a sample contract for Omnitrans' counsel to review and authorize)

Procedures to Acquire Real Property

- | I. Oversee search of suitable land with physical characteristics and locational elements suitable for Omnitrans purposes (approximately 5 acres in West Valley)
 - 1) Search all available websites and brokerage firms
 - 2) Publish search parameters to solicit proposals
- | II. Assist with selection and purchase of site
 - 1) Negotiate purchase price and contract terms
 - 2) Oversee due diligence period
 - a. Appraisal
 - b. Phase I, etc. (as needed)
 - c. CEQA
 - d. Preliminary Title Report
 - e. Additional due diligence as necessary
- | III. Open and manage escrow to close
 - a. Oversee document delivery, any amendments
 - a. Title Policy

ATTACHMENT B

SCHEDULE OF FEES

COUNTY OF SAN BERNARDINO

The San Bernardino County Real Estate Services Department (RES D) has a board-approved hourly rate of \$89 for non-County clients. RES D does not take a commission. The anticipated costs for RES D direct services are not expected to exceed \$25,000.

RES D will charge for the work as noted in the scope.

Charges necessary to sell and **acquire** the real estate and to be paid separately by Omnitrans include outside vendors as follows:

- Preliminary Title Report
- CEQA Review
- Appraisal Report
- Legal/Classified Publication costs necessitated by applicable Government Code Sections
- Cost of Auction Sign on site (at sole discretion of Omnitrans and only upon Omnitrans' written direction)
- Share of escrow costs
- **Title Policy**
- **Request for Proposals for Acquisition Sites**
- **Environmental Reviews (Phase I, II) as needed for acquisition due diligence**

The hourly rate will include time expended and costs associated with:

Preparation of surplus declaration board action item (if necessary)
Contract preparation
Distributions to qualifying agencies and mass marketing
Auction
Copying Mailings, flyers, posting
Marketing brochure and distribution
Escrow
Search
Soliciting proposals for sites to acquire

ITEM # F3

DATE: July 2, 2014

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

THROUGH P. Scott Graham, CEO/General Manager
:

FROM: Donald Walker, Director of Finance

**SUBJECT: OMNITRANS' DIRECTOR OF FINANCE FINAL REPORT –
FORWARD FUEL PURCHASES THROUGH JUNE 2014**

FORM MOTION

Receive and file the Director of Finance's final report on Omnitrans' current forward fuel purchase program ending June 2014; and

Approve the increase in the quantity of the hedging program from 150,000 gallons to 175,000 gallons per month, as recommended by the Administrative and Finance Committee on June 12, 2014.

This item was reviewed by the Administrative & Finance Committee at the June 12, 2014, meeting, and recommended to the Board of Directors for approval.

BACKGROUND

This report is submitted in order to comply with the requirements of the Omnitrans Forward Fuel Purchase Policy and Procedure. The Board of Directors authorized staff to hedge up to 150,000 gallons per month of CNG on the NYMEX exchange through Morgan Stanley. The current hedge fixes the price of approximately 45% of the Agency's monthly CNG usage through June 2014.

With the implementation of the San Bernardino Express (sbX), Omnitrans' monthly CNG consumption is estimated to increase from 345,000 gallons to 386,500 gallons, an increase of 12%. Increasing the future hedge to 175,000 as recommended will maintain the 45% ratio as in the current hedge.

If and when the price per gallon of CNG is equal to or less than the \$0.92 budgeted for FY2015, Omnitrans will implement a new forward fuel purchase program hedging 175,000 gallons of CNG for twelve (12) months. Given that the current price of CNG on the spot market is already at the budgeted amount for Fiscal Year 2015 (\$0.92 per gallon), the Administrative & Finance Committee directed staff to complete an analysis to determine if Omnitrans should enter into a

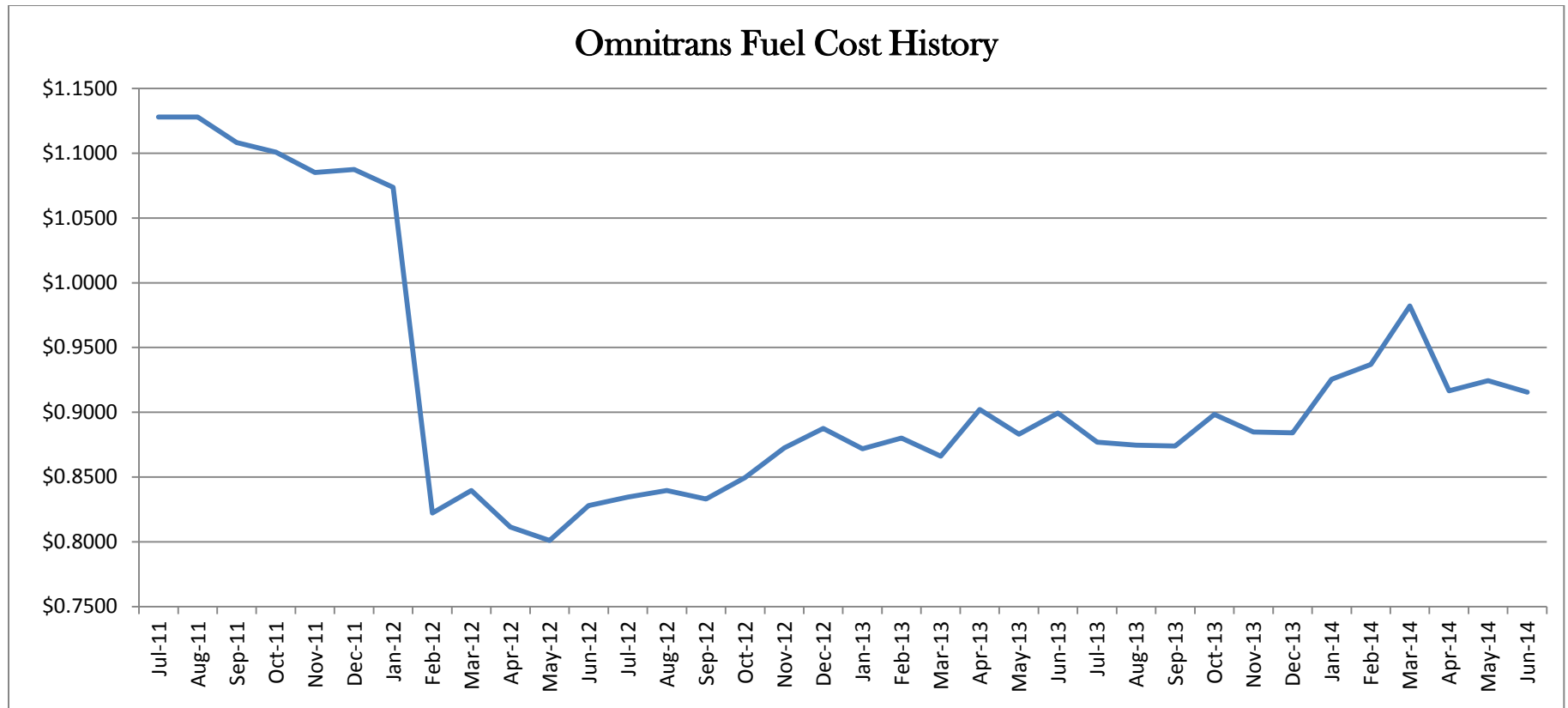
new hedge program at a higher price per gallon than the \$0.92 previously approved. Once the analysis is complete, it will be presented to the Administrative & Finance Committee for review and further direction.

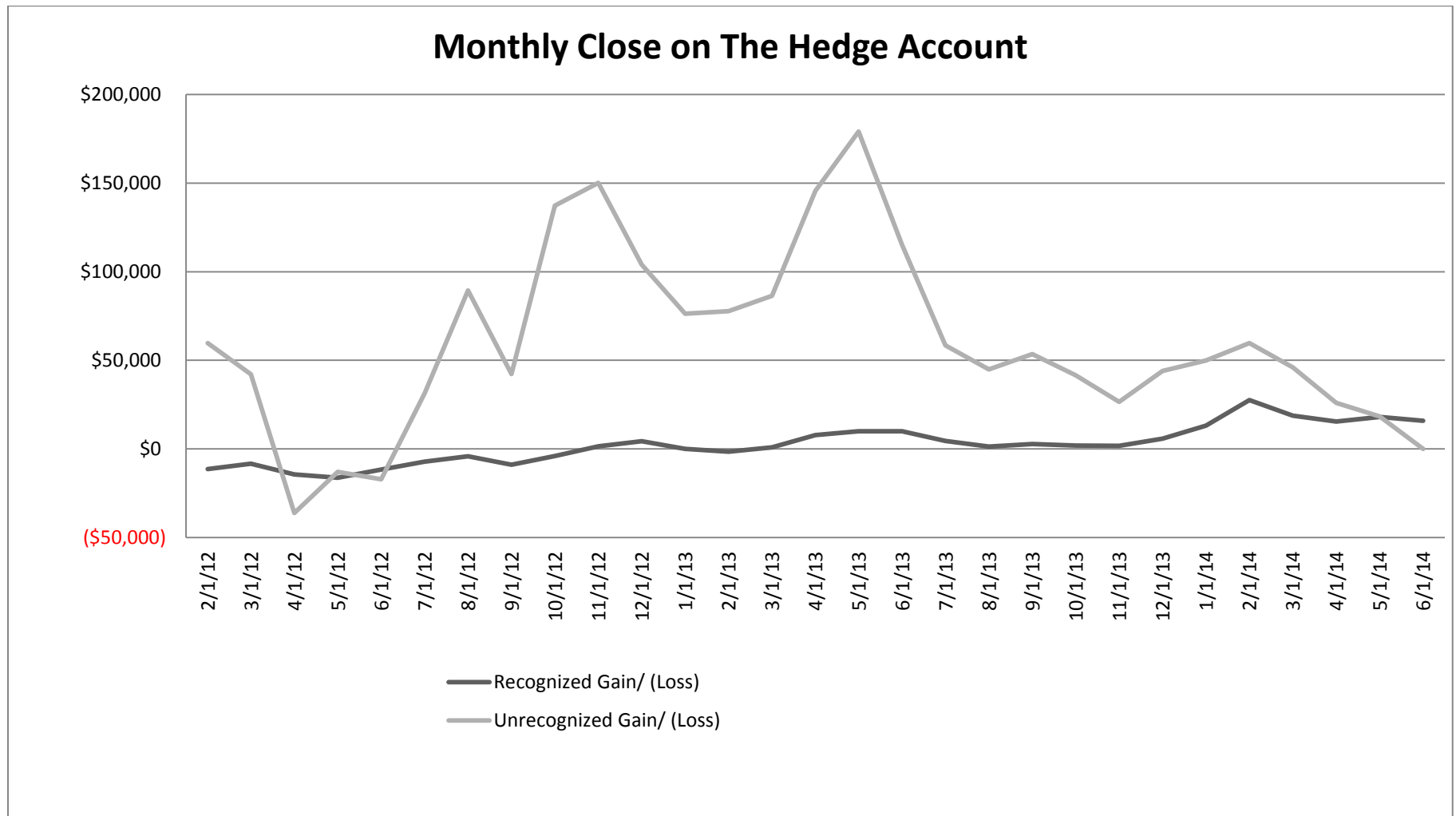
The June 2014 contract closed \$0.10 above the hedge price. The Agency will record a profit on our futures position for the month of June and that gain will offset a portion of the fuel costs that will be reflected in the Agency's Expense Summary for May 2014.

The net price that will be used for Omnitrans' June 2014 fuel purchase is \$0.9155 per gallon. This includes CNG at the So Cal Index price, the gain on the hedge position, liquefaction, delivery, and sales tax. (Note: We do not hedge the index differential. The gain on the hedge is based on the Henry Hub index. Clean Energy prices our deliveries off the SoCal index. In June, the SoCal Index settled slightly below Henry Hub.) This price is after recognition of the monthly gain on the hedge position in the amount of \$15,875.

Omnitrans will recognize a gain in the CNG account of approximately \$1,539 in the month of June 2014. Omnitrans has recognized a total gain of \$74,193 for this twenty-nine (29) month hedging program that began in February 2012 through June 2014.

PSG:dw





ITEM # F4

DATE: July 2, 2014

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

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE AWARD (BENCH) - CONTRACT MNT14-128 (A-C),
BUS WINDOW REPLACEMENT**

FORM MOTION

Authorize the CEO/General Manager to award Contracts MNT14-128 (A-C), as listed below, for the provision of Bus Window Replacement for an initial two (2) year period beginning July 7, 2014 and ending no later than July 6, 2016, with the authority to exercise three (3) single option years to extend the contracts to no later than May 6, 2019, in an aggregate amount of \$850,000, plus a 10% contingency of \$85,000, for a total not-to-exceed amount of \$935,000, should all option years be exercised.

Contract	Company
MNT14-128A	JAJ Enterprises, LLC, Coburg, OR
MNT14-128B	TransitGuard, Inc., Pagosa Springs, CO
MNT14-128C	New Flyer, Winnipeg, Canada

BACKGROUND

On March 5, 2014, Omnitrans' Board of Directors authorized the release of Invitation for Bids IFB-MNT14-128 for the provision of Bus Window Replacement, on an as needed basis. Staff released the IFB, notices were published in two local newspapers of general circulation and posted on Omnitrans' online bidding system.

Three bids were received electronically by the deadline of May 29, 2014. All were found to be responsive and responsible and are being recommended for award. Individual Purchase Orders will be issued as needed to the lowest priced contractor having the capacity to meet the Agency's lead time requirements.

The Independent Cost Estimate was based on the projected annual usage of \$169,314 or a total estimated value of \$846,570 for five (5) years. 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 these contracts will provide window replacement due to damage or vandalism and having replacement windows under contract reduces downtime and ensures competitive pricing.

PSG:JMS:KT



CONTRACT AGREEMENT

between

JAJ ENTERPRISES, LLC
91302 N. Coburg Industrial Way
Coburg, OR 97408-9492

(hereinafter "CONTRACTOR")
Telephone: 541-762-1836

And

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

CONTRACT DOCUMENTS

CONTRACT NO. MNT14-128A

BUS REPLACEMENT WINDOWS

Contract Amount: \$10,000

Omnitrans Project Manager:

Name: Frank Flores
Title: Interim Materials Supervisor
Telephone: (909) 379-7204
Email: Frank.Flores@omnitrans.org

Contract Administrator:

Name: Joanne Cook
Title: Contract Administrator
Telephone: (909) 379-7198
Email: 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 7th DAY OF JULY, 2014 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and JAJ ENTERPRISES, LLC (hereinafter referred to as "CONTRACTOR").

RECITALS

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

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

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

1. SCOPE OF WORK

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

2. PERIOD OF PERFORMANCE

The term of this Agreement shall be from the date of execution of this Agreement and continue in effect through JULY 6, 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 JULY 6, 2016 Through JULY 6, 2019, which period encompasses the Initial Term, Option Year 1, Option Year 2 and Option Year 3

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), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

4. INVOICING AND PAYMENT

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

CONTRACTOR shall submit invoices in duplicate to:

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

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

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

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

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

5. AUDIT AND INSPECTION OF RECORDS

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

6. NOTIFICATION

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

To OMNITRANS:

Omnitrans
1700 West Fifth Street
San Bernardino, CA 92411
Attn: Joanne Cook
Contract Administrator

To CONTRACTOR:

JAJ Enterprises, LLC
91302 N. Coburg Industrial Way
Coburg, OR 97408-9492
ATTN: Paul Dixon
Regional Account Representative

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: Frank Flores, Interim Materials Supervisor

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

B. Contractor's Key Personnel

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

<u>Name</u>	<u>Role</u>
<u>Paul Dixon</u>	<u>Regional Account Representative</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. 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	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.*
- D. **Employers Liability** Applicable to the work being performed, with a limit no less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate; *Endorsement naming Omnitrans as additional insured.*
- E. **Environmental Liability:** Applicable to the work being performed, with a limit no less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate; *Endorsement naming Omnitrans as additional insured.*
- F. All drivers making deliveries of products specified on this RFQ shall have Hazardous Materials Endorsements on their Commercial Driver's License, and such other Endorsements as may be required by relevant laws and/or regulations.

Additional Insured:

Omnitrans, its officers, officials, employees, agents, and volunteers.

15. INDEMNITY

CONTRACTOR shall indemnify, defend and hold harmless OMNITRANS, and its member agencies, and their officers, directors, employees and agents from and against any and all liability, expense (including, but not limited to, defense costs

and attorneys' fees), claims, causes of action, and lawsuits for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury or property damage (including property of CONTRACTOR) arising from or connected with any alleged act and/or omission of CONTRACTOR, its officers, directors, employees, agents, Subcontractors or suppliers. This indemnity shall survive termination or expiration of this Agreement and/or final payment thereunder.

16. REVISIONS IN SCOPE OF WORK

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

17. RIGHTS IN TECHNICAL DATA

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

18. OWNERSHIP OF REPORTS AND DOCUMENTS

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

19. OWNERSHIP RIGHTS

- A. In the event OMNITRANS rightfully obtains copies of Proprietary Data under the terms of the separate License Agreement and Escrow Agreement that govern rights in Documentation, Software and Intellectual Property created and/or developed by Contractor, its Third Party Software Contractors and its Suppliers as part of the Project, any derivative works and associated documentation created by or on behalf of OMNITRANS by Permitted Programmers (as defined in the License Agreement) shall be the sole and exclusive property of OMNITRANS (collectively, "OMNITRANS Intellectual Property"), and OMNITRANS may use, disclose and exercise dominion and full rights of ownership, in any manner in OMNITRANS Intellectual Property in connection with the use, operation and maintenance of a transportation system administered by OMNITRANS. No use of OMNITRANS Intellectual Property shall be made for any purpose other than in conjunction with a transportation system administered by CONTRACTOR, and OMNITRANS shall not sell, lease, rent, give away or otherwise disclose any OMNITRANS Intellectual Property to any outside third party other than Permitted Programmers. To the extent there may be any question of rights of ownership or use in any OMNITRANS Intellectual Property, Contractor shall require all of its subcontractors and suppliers (including without limitation its Third Party Software Contractors) to assign to OMNITRANS, all worldwide right, title and interest in and to all OMNITRANS Intellectual Property in a manner consistent with the foregoing terms of this paragraph. Contractor shall execute any documents as OMNITRANS may from time to time reasonably request to effectuate the terms of this paragraph.
- B. All documentation and Software which predates this Contract and which otherwise owned by Contractor or its Third Party Software Contractors, and all Documentation and Software which is created by Contractor or its Third Party Software Contractors shall be Licensed Software or Licensed Documentation, as appropriate. All Licensed Software and Licensed Documentation shall be governed by the License Agreement by and between the parties of event date herewith.

20. WORK FOR HIRE

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

21. SUBMITTAL OF CLAIMS BY CONTRACTOR

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

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

22. EQUAL OPPORTUNITY

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

23. STANDARD OF PERFORMANCE

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

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

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

25. DISQUALIFYING POLITICAL CONTRIBUTIONS

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

26. COMPLIANCE WITH LAW

CONTRACTOR shall familiarize itself with and perform the Work required under this Agreement in conformity with requirements and standards of OMNITRANS, municipal and public agencies, public and private utilities, special districts, and railroad agencies whose facilities and work may be affected by Work under this Agreement. CONTRACTOR shall also comply with all Federal, state and local laws and ordinances.

27. COMPLIANCE WITH LOBBYING POLICIES

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

28. PUBLIC RECORDS ACT

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

29. WAIVER/INVALIDITY

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

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

30. FORCE MAJEURE

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

31. CONFIDENTIALITY

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

32. CONTRACTOR'S INTERACTION WITH THE MEDIA AND THE PUBLIC

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

33. GOVERNING LAW

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

34. MODIFICATIONS TO AGREEMENT

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

35. LICENSING, PERMITS AND INSPECTION COSTS

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

36. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, (2) Attachment A, Scope of Work, (3) provisions of IFB-MNT14-128 and (4) CONTRACTOR's proposal dated May 27, 2014.

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

JAJ ENTERPRISES, LLC

P. SCOTT GRAHAM
Interim CEO/General Manager

PAUL DIXON
Regional Account Representative

DATE

DATE

Federal Tax I.D. No.

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.

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PRIVACY ACT - 5 U.S.C. 552

Applicability to Contracts

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

Flow Down

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

Model Clause/Language

The text of the following clause has not been mandated by statute or specific regulation, but has been developed by FTA.

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

- (2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

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TERMINATION 49 U.S.C. Part 18 FTA Circular 4220.1F

Applicability to Contracts

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

Flow Down

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

- a. **Termination for Convenience (General Provision)** Omnitrans may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Omnitrans to be paid the Contractor. If the Contractor has any property in its possession belonging to the Omnitrans, the Contractor will account for the same, and dispose of it in the manner the Omnitrans directs.
- b. **Opportunity to Cure (General Provision)** Omnitrans in its sole discretion may, in the case of a termination for breach or default, allow the Contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to Omnitrans' satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from Omnitrans setting forth the nature of said breach or default, Omnitrans shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Omnitrans from also pursuing all available remedies against Contractor and its sureties for said breach or default.

- c. **Waiver of Remedies for any Breach** In the event that Omnitrans elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by Omnitrans shall not limit Omnitrans remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- d. **Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, Omnitrans may terminate this contract for default. Omnitrans shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, Omnitrans may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to Omnitrans resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Omnitrans in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The contractor, within [10] days from the beginning of any delay, notifies Omnitrans in writing of the causes of delay. If in the judgment of Omnitrans, the delay is excusable, the time for completing the work shall be extended. The judgment of Omnitrans shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and

obligations of the parties will be the same as if the termination had been issued for the convenience of Omnitrans.

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SEISMIC SAFETY REQUIREMENTS 42 U.S.C. 7701 et seq. 49 CFR Part 41

Applicability to Contracts

The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

Flow Down

The Seismic Safety requirements flow down from FTA recipients and subrecipients to first tier contractors to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

Model Clauses/Language

The regulations do not provide suggested language for third-party contract clauses. The following language has been developed by FTA.

Seismic Safety - The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

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BREACHES AND DISPUTE RESOLUTION 49 CFR Part 18 FTA Circular 4220.1F

Applicability to Contracts

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down

The Breaches and Dispute Resolutions requirements flow down to all tiers.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the Omnitrans Construction Manager. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to Omnitrans Construction Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to

be heard and to offer evidence in support of its position. The decision of Omnitrans Project Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

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

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

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

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

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VETERANS PREFERENCE

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

END OF REGULATORY REQUIREMENTS

ATTACHMENT C
PRICING

Item Code	Description	ModelNum	Unit of Measure	Quantity	JAI Enterprises LLC - Unit Price	Minimum Ship 3	Minimum ship 5	Minimum ship 10	JAI Enterprises LLC - Comment
9456	NEW FLYER BUS SR585, SR674, SR709, SR813, SR842 / CURBSIDE WINDSHIELD 48" X 40" / SOLID TRANSPARENT MATERIAL	8112389	EA	1	\$183.00	\$459.00		\$1,230.00	JAI Enterprises LLC - Comment
38240	THOMAS SLF200 / CURBSIDE WINDSHIELD 48" X 43" / SOLID TRANSPARENT MATERIAL		EA	1	\$243.00	\$579.00	\$815.00	\$193.00 ea. min. ship 3 ea., \$163.00 ea. min. ship 5 ea., delivery 2-3 days	
38257	THOMAS SLF200 / STREETSIDE WINDSHIELD 48" X 43" / SOLID TRANSPARENT MATERIAL		EA	1	\$243.00	\$579.00	\$815.00	\$193.00 ea. min. ship 3 ea., \$163.00 ea. min. ship 5 ea., delivery 2-3 days	



CONTRACT AGREEMENT

between

TRANSITGUARD, INC.
P.O. Box 3771
Pagosa Springs, CO 81147
Mcandelaria@transitguard.com

(hereinafter "CONTRACTOR")
Telephone: 951-897-6705

And

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

CONTRACT DOCUMENTS

CONTRACT NO. MNT14-128B

BUS REPLACEMENT WINDOWS

Contract Amount: \$160,000

Omnitrans Project Manager:

Name: Frank Flores
Title: Interim Materials Supervisor
Telephone: (909) 379-7204
Email: Frank.Flores@omnitrans.org

Contract Administrator:

Name: Joanne Cook
Title: Contract Administrator
Telephone: (909) 379-7198
Email: 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 7th DAY OF JULY, 2014 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and JAJ ENTERPRISES, LLC (hereinafter referred to as "CONTRACTOR").

RECITALS

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

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

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

1. SCOPE OF WORK

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

2. PERIOD OF PERFORMANCE

The term of this Agreement shall be from the date of execution of this Agreement and continue in effect through JULY 6, 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 JULY 6, 2016 Through JULY 6, 2019, which period encompasses the Initial Term, Option Year 1, Option Year 2 and Option Year 3.

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 Sixty Thousand Dollars (\$160,000), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

4. INVOICING AND PAYMENT

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

CONTRACTOR shall submit invoices in duplicate to:

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

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

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

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

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

5. AUDIT AND INSPECTION OF RECORDS

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

6. NOTIFICATION

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

To OMNITRANS:

Omnitrans
1700 West Fifth Street
San Bernardino, CA 92411
Attn: Joanne Cook
Contract Administrator

To CONTRACTOR:

JAJ Enterprises, LLC
91302 N. Coburg Industrial Way
Coburg, OR 97408-9492
ATTN: Paul Dixon
Regional Account Representative

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: Frank Flores, Interim Materials Supervisor

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

B. Contractor's Key Personnel

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

<u>Name</u>	<u>Role</u>
<u>P. Mike Candelaria</u>	<u>Director</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. 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	N/A
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13. INDEPENDENT CONTRACTOR

CONTRACTOR's relationship to OMNITRANS in the performance of this Agreement is that of an independent Contractor. CONTRACTOR's personnel performing Work under this Agreement shall at all times be under CONTRACTOR's exclusive direction and control and shall be employees of CONTRACTOR and not employees of OMNITRANS. CONTRACTOR shall pay

all wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers' compensation and similar matters.

14. INSURANCE

Throughout the duration of this Agreement, CONTRACTOR shall maintain the following minimum insurance coverage, which shall be full-coverage insurance not subject to self-insurance provisions. CONTRACTOR shall not of its own initiative cause such insurance to be canceled or materially changed during the term of this Agreement.

- A. **Commercial General Liability including Products/Completed Operations:** \$1,000,000 per occurrence for bodily and property damage liability and \$2,000,000 aggregate; *Endorsement naming Omnitrans as Additional Insured.*
- B. **Automobile Liability:** \$1,000,000 combined single limit bodily and property damage liability per accident; *Endorsement naming Omnitrans as Additional Insured.*
- C. **Workers' Compensation:** statutory limits or, a State-Approved program in an amount and form that meets all applicable requirements of the Labor Code of the State of California; *waiver of subrogation that includes Omnitrans.*
- D. **Employers Liability** Applicable to the work being performed, with a limit no less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate; *Endorsement naming Omnitrans as additional insured.*
- E. **Environmental Liability:** Applicable to the work being performed, with a limit no less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate; *Endorsement naming Omnitrans as additional insured.*
- F. All drivers making deliveries of products specified on this RFQ shall have Hazardous Materials Endorsements on their Commercial Driver's License, and such other Endorsements as may be required by relevant laws and/or regulations.

Additional Insured:

Omnitrans, its officers, officials, employees, agents, and volunteers.

15. INDEMNITY

CONTRACTOR shall indemnify, defend and hold harmless OMNITRANS, and its member agencies, and their officers, directors, employees and agents from and against any and all liability, expense (including, but not limited to, defense costs

and attorneys' fees), claims, causes of action, and lawsuits for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury or property damage (including property of CONTRACTOR) arising from or connected with any alleged act and/or omission of CONTRACTOR, its officers, directors, employees, agents, Subcontractors or suppliers. This indemnity shall survive termination or expiration of this Agreement and/or final payment thereunder.

16. REVISIONS IN SCOPE OF WORK

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

17. RIGHTS IN TECHNICAL DATA

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

18. OWNERSHIP OF REPORTS AND DOCUMENTS

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

19. OWNERSHIP RIGHTS

- A. In the event OMNITRANS rightfully obtains copies of Proprietary Data under the terms of the separate License Agreement and Escrow Agreement that govern rights in Documentation, Software and Intellectual Property created and/or developed by Contractor, its Third Party Software Contractors and its Suppliers as part of the Project, any derivative works and associated documentation created by or on behalf of OMNITRANS by Permitted Programmers (as defined in the License Agreement) shall be the sole and exclusive property of OMNITRANS (collectively, "OMNITRANS Intellectual Property"), and OMNITRANS may use, disclose and exercise dominion and full rights of ownership, in any manner in OMNITRANS Intellectual Property in connection with the use, operation and maintenance of a transportation system administered by OMNITRANS. No use of OMNITRANS Intellectual Property shall be made for any purpose other than in conjunction with a transportation system administered by CONTRACTOR, and OMNITRANS shall not sell, lease, rent, give away or otherwise disclose any OMNITRANS Intellectual Property to any outside third party other than Permitted Programmers. To the extent there may be any question of rights of ownership or use in any OMNITRANS Intellectual Property, Contractor shall require all of its subcontractors and suppliers (including without limitation its Third Party Software Contractors) to assign to OMNITRANS, all worldwide right, title and interest in and to all OMNITRANS Intellectual Property in a manner consistent with the foregoing terms of this paragraph. Contractor shall execute any documents as OMNITRANS may from time to time reasonably request to effectuate the terms of this paragraph.
- B. All documentation and Software which predates this Contract and which otherwise owned by Contractor or its Third Party Software Contractors, and all Documentation and Software which is created by Contractor or its Third Party Software Contractors shall be Licensed Software or Licensed Documentation, as appropriate. All Licensed Software and Licensed Documentation shall be governed by the License Agreement by and between the parties of event date herewith.

20. WORK FOR HIRE

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

21. SUBMITTAL OF CLAIMS BY CONTRACTOR

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

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

22. EQUAL OPPORTUNITY

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

23. STANDARD OF PERFORMANCE

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

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

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

25. DISQUALIFYING POLITICAL CONTRIBUTIONS

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

26. COMPLIANCE WITH LAW

CONTRACTOR shall familiarize itself with and perform the Work required under this Agreement in conformity with requirements and standards of OMNITRANS, municipal and public agencies, public and private utilities, special districts, and railroad agencies whose facilities and work may be affected by Work under this Agreement. CONTRACTOR shall also comply with all Federal, state and local laws and ordinances.

27. COMPLIANCE WITH LOBBYING POLICIES

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

28. PUBLIC RECORDS ACT

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

29. WAIVER/INVALIDITY

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

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

30. FORCE MAJEURE

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

31. CONFIDENTIALITY

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

32. CONTRACTOR'S INTERACTION WITH THE MEDIA AND THE PUBLIC

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

33. GOVERNING LAW

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

34. MODIFICATIONS TO AGREEMENT

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

35. LICENSING, PERMITS AND INSPECTION COSTS

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

36. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, (2) Attachment A, Scope of Work, (3) provisions of IFB-MNT14-128 and (4) CONTRACTOR'S proposal dated May 29, 2014.

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

TRANSITGUARD, INC.

P. SCOTT GRAHAM
Interim CEO/General Manager

P. MIKE CANDELARIA
Director

DATE

DATE

Federal Tax I.D. No.



CONTRACT AGREEMENT

between

NEW FLYER
#76 – 630 KERNAGHAN AVE.
Winnipeg R2C 5G1 Canada
Contracts_Parts@newflyer.com

(hereinafter "CONTRACTOR")
Telephone: 800-655-2637

And

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

CONTRACT DOCUMENTS

CONTRACT NO. MNT14-128C

BUS REPLACEMENT WINDOWS

Contract Amount: \$200,000

Omnitrans Project Manager:

Name: Frank Flores
Title: Interim Materials Supervisor
Telephone: (909) 379-7204
Email: Frank.Flores@omnitrans.org

Contract Administrator:

Name: Joanne Cook
Title: Contract Administrator
Telephone: (909) 379-7198
Email: 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 7th DAY OF JULY, 2014 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and JAJ ENTERPRISES, LLC (hereinafter referred to as "CONTRACTOR").

RECITALS

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

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

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

1. SCOPE OF WORK

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

2. PERIOD OF PERFORMANCE

The term of this Agreement shall be from the date of execution of this Agreement and continue in effect through JULY 6, 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 JULY 6, 2016 Through JULY 6, 2019, which period encompasses the Initial Term, Option Year 1, Option Year 2 and Option Year 3.

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 Thousand Dollars (\$200,000), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

4. INVOICING AND PAYMENT

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

CONTRACTOR shall submit invoices in duplicate to:

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

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

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

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

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

5. AUDIT AND INSPECTION OF RECORDS

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

6. NOTIFICATION

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

To OMNITRANS:

Omnitrans
1700 West Fifth Street
San Bernardino, CA 92411
Attn: Joanne Cook
Contract Administrator

To CONTRACTOR:

NEW FLYER
#76 – 630 KERNAGHAN AVE.
Winnipeg R2C 5G1 Canada
Contracts_Parts@newflyer.com
ATTN: Diti Lodhavia
Contract Administrator

7. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES

A. OMNITRANS' Project Manager

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

Project Manager: Frank Flores, Interim Materials Supervisor

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

B. Contractor's Key Personnel

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

<u>Name</u>	<u>Role</u>
<u>Diti Lodhavia</u>	<u>Contract Administrator</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. 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	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.*
- D. **Employers Liability** Applicable to the work being performed, with a limit no less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate; *Endorsement naming Omnitrans as additional insured.*
- E. **Environmental Liability:** Applicable to the work being performed, with a limit no less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate; *Endorsement naming Omnitrans as additional insured.*
- F. All drivers making deliveries of products specified on this RFQ shall have Hazardous Materials Endorsements on their Commercial Driver's License, and such other Endorsements as may be required by relevant laws and/or regulations.

Additional Insured:

Omnitrans, its officers, officials, employees, agents, and volunteers.

15. INDEMNITY

CONTRACTOR shall indemnify, defend and hold harmless OMNITRANS, and its member agencies, and their officers, directors, employees and agents from and against any and all liability, expense (including, but not limited to, defense costs

and attorneys' fees), claims, causes of action, and lawsuits for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury or property damage (including property of CONTRACTOR) arising from or connected with any alleged act and/or omission of CONTRACTOR, its officers, directors, employees, agents, Subcontractors or suppliers. This indemnity shall survive termination or expiration of this Agreement and/or final payment thereunder.

16. REVISIONS IN SCOPE OF WORK

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

17. RIGHTS IN TECHNICAL DATA

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

18. OWNERSHIP OF REPORTS AND DOCUMENTS

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

19. OWNERSHIP RIGHTS

- A. In the event OMNITRANS rightfully obtains copies of Proprietary Data under the terms of the separate License Agreement and Escrow Agreement that govern rights in Documentation, Software and Intellectual Property created and/or developed by Contractor, its Third Party Software Contractors and its Suppliers as part of the Project, any derivative works and associated documentation created by or on behalf of OMNITRANS by Permitted Programmers (as defined in the License Agreement) shall be the sole and exclusive property of OMNITRANS (collectively, "OMNITRANS Intellectual Property"), and OMNITRANS may use, disclose and exercise dominion and full rights of ownership, in any manner in OMNITRANS Intellectual Property in connection with the use, operation and maintenance of a transportation system administered by OMNITRANS. No use of OMNITRANS Intellectual Property shall be made for any purpose other than in conjunction with a transportation system administered by CONTRACTOR, and OMNITRANS shall not sell, lease, rent, give away or otherwise disclose any OMNITRANS Intellectual Property to any outside third party other than Permitted Programmers. To the extent there may be any question of rights of ownership or use in any OMNITRANS Intellectual Property, Contractor shall require all of its subcontractors and suppliers (including without limitation its Third Party Software Contractors) to assign to OMNITRANS, all worldwide right, title and interest in and to all OMNITRANS Intellectual Property in a manner consistent with the foregoing terms of this paragraph. Contractor shall execute any documents as OMNITRANS may from time to time reasonably request to effectuate the terms of this paragraph.
- B. All documentation and Software which predates this Contract and which otherwise owned by Contractor or its Third Party Software Contractors, and all Documentation and Software which is created by Contractor or its Third Party Software Contractors shall be Licensed Software or Licensed Documentation, as appropriate. All Licensed Software and Licensed Documentation shall be governed by the License Agreement by and between the parties of event date herewith.

20. WORK FOR HIRE

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

21. SUBMITTAL OF CLAIMS BY CONTRACTOR

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

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

22. EQUAL OPPORTUNITY

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

23. STANDARD OF PERFORMANCE

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

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

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

25. DISQUALIFYING POLITICAL CONTRIBUTIONS

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

26. COMPLIANCE WITH LAW

CONTRACTOR shall familiarize itself with and perform the Work required under this Agreement in conformity with requirements and standards of OMNITRANS, municipal and public agencies, public and private utilities, special districts, and railroad agencies whose facilities and work may be affected by Work under this Agreement. CONTRACTOR shall also comply with all Federal, state and local laws and ordinances.

27. COMPLIANCE WITH LOBBYING POLICIES

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

28. PUBLIC RECORDS ACT

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

29. WAIVER/INVALIDITY

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

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

30. FORCE MAJEURE

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

31. CONFIDENTIALITY

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

32. CONTRACTOR'S INTERACTION WITH THE MEDIA AND THE PUBLIC

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

33. GOVERNING LAW

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

34. MODIFICATIONS TO AGREEMENT

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

35. LICENSING, PERMITS AND INSPECTION COSTS

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

36. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, (2) Attachment A, Scope of Work, (3) provisions of IFB-MNT14-128 and (4) CONTRACTOR'S proposal dated May 28, 2014.

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

NEW FLYER

P. SCOTT GRAHAM
Interim CEO/General Manager

DITI LODHAVIA
Contract Administrator

DATE

DATE

Federal Tax I.D. No.

ATTACHMENT C
PRICING
NEW FLYER

Item Code	Description	ModelNum	Unit of Measure	Quantity	Unit Price	New Flyer - Comment
9472	NEW FLYER BUS SR585, SR674, SR709, SR813, SR842 / STREETSIDE WINDSHIELD 48" X 40" / SOLID TRANSPARENT MATERIAL	8112388	EA	1	\$87.85	95 Calendar Days
216009	NEW FLYER BUS SR1337 / STREETSIDE WINDSHIELD 48" X 41" / SOLID TRANSPARENT MATERIAL	322120	EA	1	\$141.48	35 Calendar Days
216011	NEW FLYER BUS SR1337 / CURBSIDE WINDSHIELD 48" X 41" / SOLID TRANSPARENT MATERIAL	322119	EA	1	\$194.36	35 Calendar Days
216041	NEW FLYER BUS SR1337 / SIDE DESTINATION UPPER 50-1/2" X 11-5/8" / SOLID TRANSPARENT MATERIAL	6339242	EA	1	\$43.46	35 Calendar Days
216355	NEW FLYER BUS SR1337 / DOOR UPPER 22-1/2" X 11-3/8" / SOLID TRANSPARENT MATERIAL	296651	EA	1	\$34.05	45 Calendar Days
218608	NEW FLYER BUS SR1677 / STREETSIDE WINDSHIELD 51-5/8" X 41-1/2" / SOLID TRANSPARENT MATERIAL	343265	EA	1	\$199.09	35 Calendar Days
218610	NEW FLYER BUS SR1677 / CURBSIDE WINDSHIELD 51-5/8" X 41-1/2" / SOLID TRANSPARENT MATERIAL	343265	EA	1	\$356.52	35 Calendar Days
218937	NEW FLYER BUS SR1677 / ENTRANCE DOOR 14" X 65" / SOLID TRANSPARENT MATERIAL	332957	EA	1	\$60.20	95 Calendar Days
219013	NEW FLYER BUS SR1677 / SIDE DESTINATION SIGN UPPER 66-3/4" X 15" / SOLID TRANSPARENT MATERIAL	6405597	EA	1	\$101.18	50 Calendar Days
219143	NEW FLYER BUS SR1677 / ENTRANCE DOOR 14" X 65" / SOLID TRANSPARENT MATERIAL	332958	EA	1	\$60.20	95 Calendar Days
219245	NEW FLYER BUS SR1563, SR1564 / ENTRANCE DOOR / Entrance Door 1" X 22-1/2" / SOLID TRANSPARENT MATERIAL	351229	EA	1	\$25.27	33 Calendar Days
219249	NEW FLYER BUS SR1563, SR1564 / ENTRANCE DOOR / Entrance Door 1" X 40" / SOLID TRANSPARENT MATERIAL	351230	EA	1	\$45.28	35 Calendar Days
219251	NEW FLYER BUS SR1563, SR1564 / ENTRANCE DOOR / Entrance Door 1" X 22-1/2" / SOLID TRANSPARENT MATERIAL	351231	EA	1	\$28.66	30 Calendar Days
219253	NEW FLYER BUS SR1563, SR1564 / ENTRANCE DOOR / Entrance Door 1" X 40" / SOLID TRANSPARENT MATERIAL	351232	EA	1	\$44.21	40 Calendar Days
219256	NEW FLYER BUS SR1563, SR1564 / Exit Door 1" X 40" / SOLID TRANSPARENT MATERIAL	447812	EA	1	\$162.53	50 Calendar Days
218608	NEW FLYER BUS SR1677 / STREETSIDE WINDSHIELD 51-5/8" X 41-1/2" / SOLID TRANSPARENT MATERIAL	343265	EA	1	\$199.09	35 Calendar Days
218937	NEW FLYER BUS SR1677 / CURBSIDE WINDSHIELD 51-5/8" X 41-1/2" / SOLID TRANSPARENT MATERIAL	453489	EA	1	\$356.52	35 Calendar Days
219001	NEW FLYER BUS SR1677 / SIDE EMERGENCY FLUSH 48-1/8" X 43-1/2" / SOLID TRANSPARENT MATERIAL	6409740	EA	1	\$1,502.26	55 Calendar Days
219006	NEW FLYER BUS SR1677 / SIDE EMERGENCY FLUSH 66-3/4" X 43-1/2" / SOLID TRANSPARENT MATERIAL	6409758	EA	1	\$1,596.33	55 Calendar Days
219013	NEW FLYER BUS SR1677 / SIDE DESTINATION SIGN UPPER 66-3/4" X 15" / SOLID TRANSPARENT MATERIAL	6405597	EA	1	\$101.18	55 Calendar Days
219015	NEW FLYER BUS SR1677 / SIDE NON EMERGENCY FLUSH 48-1/8" X 43-1/2" / SOLID TRANSPARENT MATERIAL	6409782	EA	1	\$1,427.25	50 Calendar Days
219030	NEW FLYER BUS SR1677 / SIDE DESTINATION SIGN LOWER 66-3/4" X 28-1/2" / SOLID TRANSPARENT MATERIAL	6409776	EA	1	\$1,303.17	55 Calendar Days
219143	NEW FLYER BUS SR1677 / ENTRANCE DOOR 14" X 65" / SOLID TRANSPARENT MATERIAL	332958	EA	1	\$60.20	95 Calendar Days
219263	NEW FLYER BUS SR1677 / DRIVERS SASH GLASS 17-7/8" X 35-3/4" / SOLID TRANSPARENT MATERIAL	6409780	EA	1	\$566.69	65 Calendar Days
218608	NEW FLYER BUS SR1677 / STREETSIDE WINDSHIELD 51-5/8" X 41-1/2" / SOLID TRANSPARENT MATERIAL	343265	EA	1	\$199.09	35 Calendar Days
218610	NEW FLYER BUS SR1677 / CURBSIDE WINDSHIELD 51-5/8" X 41-1/2" / SOLID TRANSPARENT MATERIAL	453489	EA	1	\$356.52	35 Calendar Days
218937	NEW FLYER BUS SR1677 / ENTRANCE DOOR 14" X 65" / SOLID TRANSPARENT MATERIAL	332957	EA	1	\$60.20	95 Calendar Days
218999	NEW FLYER BUS SR1677 / SIDE NON EMERGENCY FLUSH 66-3/4" X 43-1/2" / SOLID TRANSPARENT MATERIAL	6409765	EA	1	\$1,723.12	55 Calendar Days
219001	NEW FLYER BUS SR1677 / SIDE EMERGENCY FLUSH 48-1/8" X 43-1/2" / SOLID TRANSPARENT MATERIAL	6409740	EA	1	\$1,510.69	55 Calendar Days
219004	NEW FLYER BUS SR1677 / SIDE NON EMERGENCY FLUSH 66-3/4" X 43-1/2" / SOLID TRANSPARENT MATERIAL	6409765	EA	1	\$1,723.12	55 Calendar Days
219006	NEW FLYER BUS SR1677 / SIDE EMERGENCY FLUSH 66-3/4" X 43-1/2" / SOLID TRANSPARENT MATERIAL	6409758	EA	1	\$1,596.33	55 Calendar Days
219013	NEW FLYER BUS SR1677 / SIDE DESTINATION SIGN UPPER 66-3/4" X 15" / SOLID TRANSPARENT MATERIAL	6405597	EA	1	\$101.18	50 Calendar Days
219015	NEW FLYER BUS SR1677 / SIDE NON EMERGENCY FLUSH 48-1/8" X 43-1/2" / SOLID TRANSPARENT MATERIAL	6409782	EA	1	\$1,427.25	65 Calendar Days
219030	NEW FLYER BUS SR1677 / SIDE DESTINATION SIGN LOWER 66-3/4" X 28-1/2" / SOLID TRANSPARENT MATERIAL	6409776	EA	1	\$1,303.17	65 Calendar Days
219143	NEW FLYER BUS SR1677 / ENTRANCE DOOR 14" X 65" / SOLID TRANSPARENT MATERIAL	332958	EA	1	\$60.20	95 Calendar Days
219263	NEW FLYER BUS SR1677 / DRIVERS SASH GLASS 17-7/8" X 35-3/4" / SOLID TRANSPARENT MATERIAL	6409780	EA	1	\$566.69	65 Calendar Days

ITEM # F5

DATE: July 2, 2014

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

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE AWARD - CONTRACT HR14-156
EMPLOYEE RECOGNITION AWARDS**

FORM MOTION

Authorize the CEO/General Manager to award Contract HR14-156 to Caras, LLC, DBA Eagle Recognition, of Tucker, GA, for the provision of Employee Recognition Awards for a 3-year term, beginning August 1, 2014 and ending July 31, 2017, in a not to exceed amount of \$101,800, plus a 10% contingency of \$10,180, for a total not-to-exceed amount of \$111,980.

BACKGROUND

Omnitrans provides employee awards in recognition of years of service milestones for years: 1, 5, 10, 15, 20, 25, 30, 35 and 40. Employees celebrating a milestone receive a certificate and a brochure for the selection of a commemorative item as a token of gratitude for the employee's years of services and dedication to the success of the agency.

On May 7, 2014, Omnitrans' Board of Directors authorized release of Request for Proposals RFP-HR14-156. Notices were published in two local newspapers of general circulation and posted on Omnitrans' online bidding system.

Three proposals were received by the June 2, 2014 deadline. All were deemed responsive and responsible and evaluated in accordance with the evaluation criteria included in the RFP.

		Eagle Recognition Corp.	Incentive Services, Inc.	MTM Recognition
Criteria	Points Possible			
Responsiveness to requirements of scope	15	12	12	12.5
Quality of Work	40	34.67	33.33	29.33
Experience	20	16.67	17.33	14.67
Technical Total	75	63.34	62.66	56.50
Cost/Price	25	25	24.8	22.6
TOTAL	100	88.34	87.46	79.10

The two highest-ranked firms were invited to submit Best & Final Offers (BAFO). Eagle Recognition's BAFO reduced the originally proposed price by an additional \$2,800.

Eagle Recognition ranked highest technically and provided the best overall value. The Independent Cost Estimate (ICE) for this project was \$107,000 for a three year period, which results in a cost savings of \$5,200, and therefore, deemed fair and reasonable.

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

FUNDING SOURCES

The cost associated with this procurement is budgeted in the Human Resources Department's Operating Budget as follows:

Department 1600
Expenditure Code 509260

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

CONCLUSION

By approving award of this contract, Omnitrans will continue to recognize valued staff for their work and longevity with the agency.

PSG:JMS:JC



CONTRACT AGREEMENT

between

CARAS, LLC DBA EAGLE RECOGNITION
CORPORATION
2706 Mountain Industrial Blvd. #300
Tucker, GA 30084
cainsworth@eaglerecognition.com

(hereinafter "CONTRACTOR")
Telephone: 800-898-2800 ext. 134

And

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

CONTRACT DOCUMENTS

CONTRACT NO. HR14-156

EMPLOYEE RECOGNITION AWARDS

Contract Amount: \$101,800

Omnitrans Project Manager:

Name: Melissa Saenz
Title: HR Assistant
Telephone: (909) 379-7271
Email: melissa.saenz@omnitrans.org

Contract Administrator:

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



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ATTACHMENT A - SCOPE OF WORK

ATTACHMENT B - PRICING

This Agreement is made and entered into as of this 1st day of August, 2014 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and Caras, LLC DBA Eagle Recognition Corp. (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 July 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 August 1, 2014 Through July 31, 2017, which period encompasses the Initial Term.

3. COMPENSATION

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

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed One Hundred One Thousand, Eight Hundred Dollars (\$101,800), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

4. INVOICING AND PAYMENT

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

CONTRACTOR shall submit invoices in duplicate to:

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

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

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

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

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

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

5. AUDIT AND INSPECTION OF RECORDS

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

6. NOTIFICATION

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

To OMNITRANS:

Omnitrans
1700 West Fifth Street
San Bernardino, CA 92411
Attn: Joanne Cook
Contract Administrator

To CONTRACTOR:

Caras, LLC
DBA Eagle Recognition Corporation
2706 Mountain Industrial Blvd. #300
Tucker, GA 30084
ATTN: John C. Ainsworth
VP 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: Melissa Saenz, HR Assistant

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

B. Contractor's Key Personnel

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

<u>Name</u>	<u>Role</u>
<u>John C. Ainsworth</u>	<u>VP Sales & Marketing</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. 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	N/A
<hr/>	<hr/>
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13. INDEPENDENT CONTRACTOR

CONTRACTOR's relationship to OMNITRANS in the performance of this Agreement is that of an independent Contractor. CONTRACTOR's personnel performing Work under this Agreement shall at all times be under CONTRACTOR's exclusive direction and control and shall be employees of CONTRACTOR and not employees of OMNITRANS. CONTRACTOR shall pay

all wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers' compensation and similar matters.

14. INSURANCE

Throughout the duration of this Agreement, CONTRACTOR shall maintain the following minimum insurance coverage, which shall be full-coverage insurance not subject to self-insurance provisions. CONTRACTOR shall not of its own initiative cause such insurance to be canceled or materially changed during the term of this Agreement.

- A. **Commercial General Liability including Products/Completed Operations:** \$1,000,000 per occurrence for bodily and property damage liability and \$2,000,000 aggregate; *Endorsement naming Omnitrans as Additional Insured.*
- B. **Automobile Liability:** \$1,000,000 combined single limit bodily and property damage liability per accident; *Endorsement naming Omnitrans as Additional Insured.*
- C. **Workers' Compensation:** statutory limits or, a State-Approved program in an amount and form that meets all applicable requirements of the Labor Code of the State of California; *waiver of subrogation that includes Omnitrans.*
- D. **Employers Liability** Applicable to the work being performed, with a limit no less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate; *Endorsement naming Omnitrans as additional insured.*
- E. **Environmental Liability:** Applicable to the work being performed, with a limit no less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate; *Endorsement naming Omnitrans as additional insured.*
- F. All drivers making deliveries of products specified on this RFQ shall have Hazardous Materials Endorsements on their Commercial Driver's License, and such other Endorsements as may be required by relevant laws and/or regulations.

Additional Insured:

Omnitrans, its officers, officials, employees, agents, and volunteers.

15. INDEMNITY

CONTRACTOR shall indemnify, defend and hold harmless OMNITRANS, and its member agencies, and their officers, directors, employees and agents from and against any and all liability, expense (including, but not limited to, defense costs

and attorneys' fees), claims, causes of action, and lawsuits for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury or property damage (including property of CONTRACTOR) arising from or connected with any alleged act and/or omission of CONTRACTOR, its officers, directors, employees, agents, Subcontractors or suppliers. This indemnity shall survive termination or expiration of this Agreement and/or final payment thereunder.

16. REVISIONS IN SCOPE OF WORK

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

17. RIGHTS IN TECHNICAL DATA

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

18. OWNERSHIP OF REPORTS AND DOCUMENTS

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

19. OWNERSHIP RIGHTS

- A. In the event OMNITRANS rightfully obtains copies of Proprietary Data under the terms of the separate License Agreement and Escrow Agreement that govern rights in Documentation, Software and Intellectual Property created and/or developed by Contractor, its Third Party Software Contractors and its Suppliers as part of the Project, any derivative works and associated documentation created by or on behalf of OMNITRANS by Permitted Programmers (as defined in the License Agreement) shall be the sole and exclusive property of OMNITRANS (collectively, "OMNITRANS Intellectual Property"), and OMNITRANS may use, disclose and exercise dominion and full rights of ownership, in any manner in OMNITRANS Intellectual Property in connection with the use, operation and maintenance of a transportation system administered by OMNITRANS. No use of OMNITRANS Intellectual Property shall be made for any purpose other than in conjunction with a transportation system administered by CONTRACTOR, and OMNITRANS shall not sell, lease, rent, give away or otherwise disclose any OMNITRANS Intellectual Property to any outside third party other than Permitted Programmers. To the extent there may be any question of rights of ownership or use in any OMNITRANS Intellectual Property, Contractor shall require all of its subcontractors and suppliers (including without limitation its Third Party Software Contractors) to assign to OMNITRANS, all worldwide right, title and interest in and to all OMNITRANS Intellectual Property in a manner consistent with the foregoing terms of this paragraph. Contractor shall execute any documents as OMNITRANS may from time to time reasonably request to effectuate the terms of this paragraph.
- B. All documentation and Software which predates this Contract and which otherwise owned by Contractor or its Third Party Software Contractors, and all Documentation and Software which is created by Contractor or its Third Party Software Contractors shall be Licensed Software or Licensed Documentation, as appropriate. All Licensed Software and Licensed Documentation shall be governed by the License Agreement by and between the parties of event date herewith.

20. WORK FOR HIRE

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

21. SUBMITTAL OF CLAIMS BY CONTRACTOR

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

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

22. EQUAL OPPORTUNITY

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

23. STANDARD OF PERFORMANCE

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

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

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

25. DISQUALIFYING POLITICAL CONTRIBUTIONS

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

26. COMPLIANCE WITH LAW

CONTRACTOR shall familiarize itself with and perform the Work required under this Agreement in conformity with requirements and standards of OMNITRANS, municipal and public agencies, public and private utilities, special districts, and railroad agencies whose facilities and work may be affected by Work under this Agreement. CONTRACTOR shall also comply with all Federal, state and local laws and ordinances.

27. COMPLIANCE WITH LOBBYING POLICIES

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

28. PUBLIC RECORDS ACT

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

29. WAIVER/INVALIDITY

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

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

30. FORCE MAJEURE

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

31. CONFIDENTIALITY

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

32. CONTRACTOR'S INTERACTION WITH THE MEDIA AND THE PUBLIC

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

33. GOVERNING LAW

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

34. MODIFICATIONS TO AGREEMENT

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

35. LICENSING, PERMITS AND INSPECTION COSTS

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

36. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, (2) Attachment A, Scope of Work, (3) provisions of RFP-HR14-156 and (4) CONTRACTOR' proposal dated May 30, 2014 and the Best and Final Offer (BAFO) submitted as requested.

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

CARAS, LLC
DBA EAGLE RECOGNITION CORP.

P. SCOTT GRAHAM
CEO/General Manager

JOHN C. AINSWORTH
Vice President Sales & Marketing

DATE

DATE

Federal Tax I.D. No.

CM_____

ATTACHMENT A
SCOPE OF WORK
HR14-156

1. **SERVICE AWARDS REQUIREMENTS**

- A. Contractor shall provide a certificate for the signature of the current Omnitrans CEO/General Manager prior to presentation.
- B. Certificates shall come with a presentation case or folder.
- C. Contractor shall provide a brochure containing a variety of items to allow the recipient to choose something of their liking.
- D. Contractors' brochure shall allow the recipient to pick any item in the brochure for the quoted price not an average price per award level.
- E. Contractors' brochure shall contain a service awards for each respective year of 1, 5, 10, 15, 20, 25, 30, 35 and 40 years.
- F. Contractor shall immediately notify Omnitrans of any changes and/or discontinued service award items so that an equal substitute can be offered and approved by Omnitrans at no additional cost.

2. **DELIVERY**

- A. Shipping
 - 1) Deliveries shall be made in quarterly bulk shipments to Omnitrans.
 - 2) All items shall be shipped F.O.B. Destination Omnitrans, 1700 W. Fifth Street, San Bernardino CA 92411.

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

- A. Contractor shall promptly replace any incorrectly produced, damaged and/or defective service award items at no additional cost to Omnitrans.
- B. Contractor shall reimburse Omnitrans for any and all cost associated with replacing or acquiring any service award and certificate which is defective, incorrectly produced, damaged and/or delayed in delivery.

ATTACHMENT B
HR14-156
PRICING

YEAR 1

All prices ARE ALL INCLUSIVE to include shipping/delivery and allow for the option of engraving/logo application.

Service Years	Projected Quantity of Awards	Service Award Item/Description	Award Price	Certificate Price	Total
1	45	Eagle Level V, Certificate, Freight & Tax	\$88.20	Included	\$3,969
5	17	Eagle level VI, Certificate, Freight & Tax	\$110.25	Included	\$1,874.25
10	49	Eagle Level VIII, Certificate, Freight & Tax	\$176.40	Included	\$8,643.60
15	29	Eagle Level IX, Certificate, Freight & Tax	\$222.60	Included	\$6,455.40
20	22	Eagle Level X, Certificate, Freight & Tax	\$279.31	Included	\$6,144.82
25	8	Eagle Level XI, Certificate, Freight & Tax	\$326.56	Included	\$2,612.48
30	3	Eagle Level XII, Certificate, Freight & Tax	\$388.51	Included	\$1,165.53
35	0	Eagle Level XIII, Certificate, Freight & Tax	\$484.06	Included	\$0.00
40	0	Eagle Level XIV, Certificate, Freight & Tax	\$585.92	Included	\$0.00

ATTACHMENT B PRICING FORM

YEAR 2

Service Years	Projected Quantity of Awards	Service Award Item/Description	Award Price	Certificate Price	Total
1	25	Eagle Level V, Certificate, Freight & Tax	\$88.20	Included	\$2,205.00
5	6	Eagle level VI, Certificate, Freight & Tax	\$110.25	Included	\$661.50
10	55	Eagle Level VIII, Certificate, Freight & Tax	\$176.40	Included	\$9,702.00
15	45	Eagle Level IX, Certificate, Freight & Tax	\$222.60	Included	\$10,017.00
20	10	Eagle Level X, Certificate, Freight & Tax	\$279.31	Included	\$2,793.10
25	12	Eagle Level XI, Certificate, Freight & Tax	\$326.56	Included	\$3,918.72
30	4	Eagle Level XII, Certificate, Freight & Tax	\$388.51	Included	\$1,554.04
35	3	Eagle Level XIII, Certificate, Freight & Tax	\$484.06	Included	\$1,452.18
40	2	Eagle Level XIV, Certificate, Freight & Tax	\$585.92	Included	\$1,171.84

ATTACHMENT B PRICING FORM

YEAR 3

Service Years	Projected Quantity of Awards	Service Award Item/Description	Award Price	Certificate Price	Total
1	25	Eagle Level V, Certificate, Freight & Tax	\$88.20	Included	\$2,205.00
5	26	Eagle level VI, Certificate, Freight & Tax	\$110.25	Included	\$2,866.50
10	35	Eagle Level VIII, Certificate, Freight & Tax	\$176.40	Included	\$6,174.00
15	33	Eagle Level IX, Certificate, Freight & Tax	\$222.60	Included	\$7,345.80
20	20	Eagle Level X, Certificate, Freight & Tax	\$279.31	Included	\$5,586.20
25	10	Eagle Level XI, Certificate, Freight & Tax	\$326.56	Included	\$3,265.60
30	4	Eagle Level XII, Certificate, Freight & Tax	\$388.51	Included	\$1,554.04
35	0	Eagle Level XIII, Certificate, Freight & Tax	\$484.06	Included	\$0.00
40	0	Eagle Level XIV, Certificate, Freight & Tax	\$585.92	Included	\$0.00

ITEM # F6

DATE: July 2, 2014

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

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

SUBJECT: AUTHORIZE RELEASE – IFB-MNT14-243, TRANSMISSION PARTS

FORM MOTION

Authorize the CEO/General Manager to release Invitation for Bids IFB-MNT14-243, for the provision of Transmission Parts for a two (2) year base period, and three (3) single option years beginning September 16, 2014, and ending no later than September 15, 2019.

BACKGROUND

Omnitrans requires transmission parts to ensure our fleet stays in good working condition and maintains service. Purchasing these items under contract provides the Agency a cost savings through economies of scale and avoids any lapse of inventory.

In April 2013, the Procurement team released and awarded New Flyer Bus and Cummins Engine Parts agreements to minimize any service interruptions due to bus maintenance issues. Although thousands of parts were solicited for, there are still more to parts that require contracts. It is the Procurement Department's goal to continue releasing solicitations until all required bus parts are under contract.

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 \$492,150 for five years.

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

By proceeding with this solicitation, Omnitrans will achieve cost savings and benefit from economies of scale.

PSG:JMS:AA

ITEM # G1

DATE: July 2, 2014

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

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Maurice A. Mansion, Treasury Manager

SUBJECT: **PUBLIC HEARING - FEDERAL TRANSIT ADMINISTRATION
SECTION 5307 AND SECTION 5339 FUNDS**

FORM MOTION

Close the public hearing concerning the Federal Transit Administration (FTA) §5307 and §5339 for Fiscal Year 2015, to be held at 8:00 a.m., July 2, 2014, at the Omnitrans Metro Facility, 1700 West Fifth Street, San Bernardino, CA 92411.

SUMMARY

The date and time was set with due notice for the federally required public hearing allowing comment on projects involving Federal assistance.

A public hearing affords the opportunity to obtain views of officials and citizens regarding the proposed use of Federal assistance and community support for the amended program of projects.

BACKGROUND

To qualify for Federal assistance through the FTA, Omnitrans is required to hold a public hearing on the proposed use of Federal funds. FTA also requires that Omnitrans give the public sufficient notice, that any comments be incorporated into the grant application and that the notice include language which indicates that in the absence of substantive comments, Federal assistance will be sought.

The projects shown in the Public Hearing Notice (attached) are included in the Fiscal Year 2015 budget and were approved at the Board of Director's meeting held May 7, 2014.

FINANCIAL IMPACT

All projects described are fiscally constrained and are contained in past-approved Omnitrans budgets.

NOTICE OF PUBLIC HEARING

Fiscal Year 2015 Capital Projects
 Using §5307 and §5339

CAPITAL PROJECTS – FY 2015

Project Description	Total Cost	Federal Share
		FTA 5307
Management Information Systems	\$ 3,586,000	\$ 2,868,800
Replacement of Revenue Vehicles - ACCESS	\$ 1,150,000	\$ 880,000
Replacement/Lease of Service Vehicles	\$ 634,000	\$ 504,000
1% Transit Enhancements	\$ 250,000	\$ 200,000
Stops & Zones	\$ 209,752	\$ 153,288
Capitalization of Tires	\$ 499,015	\$ 399,212
Capitalization of Security	\$ 192,440	\$ 153,952
Capitalization of Leases	\$ 138,000	\$ 104,395
Capitalization of ACCESS Service Costs	\$ 3,200,000	\$ 1,600,000
Capitalization of Preventive Maintenance	\$ 10,800,000	\$ 8,640,000
Other	\$ 1,439,792	\$ 1,439,792
Total	\$ 22,098,999	\$ 16,943,439
		FTA CMAQ
Replacement of Revenue Vehicles	\$ 7,972,215	\$ 5,152,215
Total	\$ 7,972,215	\$ 5,152,215
		FTA 5339
Replacement of Heavy Duty Coaches	\$ 1,703,000	\$ 1,703,000
Total	\$ 1,703,000	\$ 1,703,000
TOTAL FEDERAL SHARE		\$ 23,798,654