



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

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

A. CALL TO ORDER

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

B. ANNOUNCEMENTS/PRESENTATIONS

1. Next Board Meeting: Wednesday, August 3, 2016 – 8:00 a.m.
Omnitrans Metro Facility Board Room

C. COMMUNICATIONS FROM THE PUBLIC

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

D. POSSIBLE CONFLICT OF INTEREST ISSUES

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

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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 #E7, Action on Consent Calendar.

1. Approve Board Minutes – June 1, 2016
2. Receive and File Executive Committee Minutes April 5, 2016
3. Receive and File Administrative and Finance Committee Minutes – April 14, 2016
4. Receive and File Construction Progress Report No. 47 through April 30, 2016 – sbX E Street Corridor BRT Project
5. Authorize Release, Invitation for Bids IFB-MNT17-15 – Paint and Carpet Replacement and Installation

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

E. CONSENT CALENDAR CONTINUED	
6. Press Articles and Letters of Interest to the Board	29
7. Action on Consent Calendar	
F. DISCUSSION ITEMS	
The following items do not legally require any public testimony, although the Chair may open the meeting for public input.	
1. CEO/General Manager's Report	35
2. Authorize Award, Contract ITS16-93 – Internet Services	36
3. Authorize Award, Contract MKP16-37, Ruben Campos Park Bus Stop Improvements	48
4. Authorize Award, Contract OPS16-17 – Audible Pedestrian Warning Systems	102
5. Amend Fiscal Year 2017 Budget and 2015-2020 Short Range Transit Plan to Transfer Funds – Legal Services	130
G. PUBLIC HEARING	
There is no Public Hearing scheduled.	
H. BOARD BUSINESS	
Closed Session	
1. Conference with Labor Negotiator P. Scott Graham concerning labor negotiations with Amalgamated Transit Union Local No. 1704 regarding the Coach Operator Unit, pursuant to Government Code Section 54957.6	
2. Conference with Labor Negotiator P. Scott Graham concerning labor negotiations with Teamsters Union Local No. 166 regarding the Maintenance and Administrative/Support Unit, pursuant to Government Code Section 54957.6	
3. Conference with Legal Counsel Dennis Walsh, pursuant to Government Code Section 54956.9(a), Case No. CIVDS1400420, Robert Miller vs. Omnitrans	
I. REMARKS AND ANNOUNCEMENTS	
J. ADJOURNMENT	

ITEM # D1

DATE: July 6, 2016

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

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

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

FORM MOTION

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

Item	Contract	Principals & Agents	Subcontractors
#F2	Authorize Award Contract ITS16-93 Internet Services	<i>Level 3 Communications, Inc. Broomfield, CO Gavin Mckelvey VP Marketing, North America</i>	<i>None</i>
#F3	Authorize Award Contract MKP16-37 Ruben Campos Park Bus Stop Improvements	<i>Hillcrest Contracting, Inc. Corona, CA Glenn J. Salsbury President</i>	<i>V&E Tree Service Orange, CA Buena Vista Landscape Orange, CA</i>
#F4	Authorize Award Contract OPS16-17 Audible Pedestrian Warning Systems	<i>Clever Devices Ltd. Woodbury, NY Francis J. Ingrassia President</i>	<i>None</i>

PSG:JMS

CONFLICT OF INTEREST FORM

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

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

BOARD MEMBER INFORMATION

BOARD MEMBER NAME	CITY/COUNTY NAME	MEETING DATE

CAMPAIGN CONTRIBUTIONS

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

FINANCIAL INTEREST

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

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

SIGNATURE

Board Member Signature	Date
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ITEM # _____ E1 _____

**BOARD OF DIRECTORS' MEETING
MINUTES OF JUNE 1, 2016**

A. CALL TO ORDER

Chairman Sam Spagnolo called the regular meeting of the Omnitrans Board of Directors to order at 8:00 a.m., Wednesday, June 1, 2016, at the Omnitrans Facility located at 1700 West 5th Street, San Bernardino, California.

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

BOARD MEMBERS PRESENT

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

BOARD MEMBERS NOT PRESENT

Supervisor Robert Lovingood, County of San Bernardino
Supervisor James Ramos, County of San Bernardino
Mayor Deborah Robertson, City of Rialto

OMNITRANS' ADMINISTRATIVE STAFF PRESENT

P. Scott Graham, CEO/General Manager
Diane Caldera, Director of Operations
Jack Dooley, Director of Maintenance
Marge Ewing, Director of Human Resources, Safety & Regulatory Compliance
Samuel Gibbs, Director of Internal Audit
Jacob Harms, Director of Information Technology
Andres Ramirez, IPMO Program Manager
Jennifer Sims, Director of Procurement
Don Walker, Director of Finance
Wendy Williams, Director of Marketing & Planning
Mike Bonacio, Technical Services Manager
Barbara Erwin, Safety & Regulatory Compliance Manager
Jeremiah Bryant, Service Planning Manager
Maurice Mansion, Treasury Manager
Omar Bryant, East Valley Maintenance Manager
Eugenia Pinheiro, Contracts Manager
Erica Lopez, Access Operations Manager
Kathy McClure, Sr. Contracts Administrator
Krystal Turner, Contracts Administrator
Christine Van Matre, Contracts Administrator
Ross Hrinko, Safety & Regulatory Compliance Specialist
Mark Crosby, Security & Emergency Preparedness Coordinator
Vicki Dennett, Executive Assistant to CEO/General Manager

LEGAL COUNSEL

Carol Greene, Deputy County Counsel

B. ANNOUNCEMENTS/PRESENTATIONS

1. Next Board Meeting: Wednesday, July 6, 2016, 8:00 a.m.
Omnitrans Metro Facility Board Room
2. Coach Operator Benito Zavalza was presented with an award commemorating his Second Place win in the National APTA Rodeo.

Member Gonzales arrived at 8:03 a.m.
Member Dailey arrived at 8:06 a.m.

C. COMMUNICATIONS FROM THE PUBLIC

1. Rick Teichert from Family Service Association spoke, thanking the Omnitrans Board for the donation of a 40' bus for their Mobile Fresh Program (Item F8). They are in negotiations with the San Manuel Band of Mission Indians for a grant to retrofit the bus to accommodate the fresh produce.

2. Ericka Flores, representing CCAEJ, spoke briefly regarding the proposal to remove the LNG tanks from Omnitrans property. As a group they are happy that the safety of the community has become a priority of Omnitrans, and she expressed gratitude on behalf of the CCAEJ.
3. Tanya Pitzer, speaking on behalf of Jimmy Grissom, related several complaints regarding the Access bus service. Mr. Grissom depends on Access services, and is unhappy with services overall, including some specific instances which were noted by Erica Lopez, the Access Operations Manager, and will be addressed.

D. POSSIBLE CONFLICT OF INTEREST ISSUES

There were no Conflict of Interest Issues.

E. CONSENT CALENDAR

1. Approve Board Minutes – May 4, 2016
2. Receive and File Affirmative Action Status Report – As of May 12, 2016
3. Adopt Resolution No. 292-16, Authorization to Execute Certifications and Assurances for 2016 Affordable Housing and Sustainable Communities (AHSC) Program
4. Authorize Release, Request for Proposals RFP-HRS17-03, Security Services
5. Authorize Release, Invitation for Bids IFB-MNT17-08, West Valley Hydraulic Vehicle Lifts Replacement
6. Authorize Release, Request for Proposals RFP-MNT17-09, Auction Services
7. Authorize Release, Request for Proposals RFP-MNT17-10, Twenty-seven Fuel Efficient Mid-size Sedans
8. Authorize Award, Contract IPMO17-06, Geotechnical and Materials Testing Services
9. Press Articles and Letters of Interest to the Board

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

F. DISCUSSION ITEMS

1. CEO/General Manager's Report

CEO/General Manager P. Scott Graham reviewed the CEO/General Manager's Report. Mr. Graham and Chairman Spagnolo thanked Carol Greene for her 13 years of outstanding service to Omnitrans.

2. Adopt Fiscal Year 2016-2017 Marketing Plan

Marketing/Planning Director Wendy Williams presented the FY 2016-2017 Marketing Plan and discussed highlights, including the plan to increase overall system ridership.

Member Gonzales left the meeting at 8:33 a.m., and returned at 8:39 a.m.

Member Rutherford asked what is new and different in this year's plan. Ms. Williams mentioned several, including the mobile responsiveness website; digital advertising, such as ads on Pandora which will help promote the GoSmart Program, particularly amongst the student clientele; the sbX before and after survey; mobile ticketing; new customer education campaigns such as Omnitrans' 40-year anniversary; expansion of special services programs; San Manuel Gateway College GoSmart; and Bike Hubitat. Member Wapner asked how effectiveness is measured and how ROI is calculated. The answer depends on the specific promotion; i.e., the 66er's returning two tickets for each bus pass is easily measurable. Asked if we survey a broad spectrum of the population for our responses, the answer is yes. Member Lilburn commented that the buses don't run after at-home 66er games. We do have later service that runs during the week, but cuts out on weekends. Asked whether Omnitrans is willing to do presentations to stakeholders, the answer is yes. Member Hagman wondered whether we track repeat customers, or new customers? Are we spending money on people who already are aware of and use Omnitrans services? The only way to answer this question is with a survey; typically we see about a 20% turnover rate annually. We do target new customers, especially on the college campuses. The Loma Linda GoSmart program is a great example. Member Hagman suggested including a brief survey to folks who sign onto the WiFi. Member Yates said it would be a great opportunity along the sbX corridor if we could work with those business owners, such as offering incentives like discount coupons to riders. Member Dailey said only 18% of our riders have access to a car, so why the focus on low gasoline prices? Low gas prices make automobiles more affordable to riders, so we do believe this does have an impact on our ridership. Addressing the lack of available drivers—we've had a large number of drivers separate from Omnitrans recently, so this is a temporary anomaly. We've taken steps to shorten the hiring time. Productivity vs. coverage demands (65% vs. 35%) is continuing to be addressed. Slow reaction time is a negative part of the analysis—for example, if we have to raise fares or change services, this is part of the environment we operate in and we can't do things at the drop of a hat. Regarding low market share—our population grows up not knowing about mass transportation as opposed to populations in more urban settings, so our task of educating the community to public transportation is difficult. Member Wapner said it appears that we continue doing the same things expecting different results. Perhaps it would be a good idea to bring in an outside marketing professional to possibly bring in some new ideas. The Board concurs, and this will be looked into. Member Gonzales commented about drivers not showing up for work—how does this impact our overall outcomes? It does affect our reliability; should drivers be included in our marketing efforts? Member DeLaRosa suggested that a comparison survey could be conducted, such as pointing out how much it costs to own/operate a car as opposed to ride a bus.

Member Robles left the meeting at 8:47 a.m., returning at 8:51 a.m.

Member Lilburn left the meeting at 8:57 a.m., returning at 9:00 a.m.

Member Dailey left the meeting at 9:04 a.m., returning at 9:06 a.m.

M/S (Eaton/Yates) that adopted the Omnitrans Fiscal Year 2016-17 annual Marketing Plan. Motion was unanimous by members present.

Member DeLaRosa left the meeting at 9:11 a.m., and did not return.

3. Approve Agreement No. 16-1001458, San Bernardino County Transportation Authority – Measure I Consolidated Transportation Services Agency Funds

M/S (Eaton/Yates) that approved Agreement No. 16-1001458, in substantially the form attached, with the San Bernardino County Transportation Authority (SANBAG), allocating Measure I Consolidated Transportation Services Agency (CTSA) funds to Omnitrans for operations of a CTSA to provide for the coordination of transit services for seniors and persons with disabilities. Motion was unanimous by Members present.

4. Authorize Award, Contract IPMO16-98, sbX E Street Corridor Public Address System

M/S (Graham/Yates) that authorized the CEO/General Manager to award Contract IPMO16-98 to Ford Audio-Video Systems, Inc., of Tulsa, OK, for the provision and installation of integrated Public Address (PA) system along the sbX E Street Corridor in the amount of \$563,875.00, plus a ten percent contingency of \$56,387.50, and a 3.27% CAP in the amount of \$20,282.58, for a total not-to-exceed amount of \$640,545.08. Motion was unanimous by Members present.

5. Authorize Contract Amendment 1, Trapeze Contracts ITS16-07, MNT15-153, and MNT15-184

M/S (Eaton/Spagnolo) that authorized the CEO/General Manager to execute Amendment 1 to Sole Source Contract ITS16-07 to Trapeze Software Group, Inc., Cedar Rapids, IA, to upgrade Omnitrans' Onboard Communication System, in the amount of \$507,932, with the option to upgrade Omnitrans' paratransit fleet in the amount of \$87,833, plus a five percent contingency of \$29,788.27, and a 3.27% Cost Allocation Plan (CAP) of \$20,455, for a total not-to-exceed amount of \$646,008;

That authorized the CEO/General Manager to execute Amendment 1 to Sole Source Contract MNT15-153 to reduce the amount of the base agreement by \$9,790.82, and \$7,368.15, should all option years be exercised; and

That authorized the CEO/General Manager to execute Amendment 1 to Sole Source Contract MNT15-184 to reduce the amount of the base agreement by \$65,560.48, and \$49,349.76, should all option years be exercised. Motion was unanimous by Members present.

Member Riddell left the meeting at 9:24 a.m.

6. Authorize Award – Contract MNT16-100, Brake Shoe Relining Services

M/S (Yates/Eaton) that authorized the CEO/General Manager to rescind award of Contract MNT16-100 to Franklin Truck Parts Inc., of Commerce, CA, for the provision of Brake Shoe Relining Services, for a three (3) year base period with two (2) single option years, ending no later than April 2021, in the amount of \$679,469; and

That authorized the CEO/General Manager to award Contract MNT16-100 to American Moving Parts, LLC of Los Angeles, CA, for the provision of Brake Shoe Relining Services, for a three (3) year base period with two (2) single option years, ending no later than June 2021, in the amount of \$673,260, plus a ten percent contingency of \$67,326, for a total not-to-exceed amount of \$740,586. Motion was unanimous by Members present.

7. Authorize Award, Contract MKP16-102, Bus Book Printing Services

M/S (Yates/Eaton) that authorized the CEO/General Manager to award Contract MKP16-102 to iColor Printing & Mailing, Inc. of Los Angeles, CA, for the provision of Bus Book Printing Services for a two-year base period beginning July 1, 2016 and ending June 30, 2018 with the authority to exercise three single option years ending no later than June 30, 2021, in an amount of \$414,277, plus a ten percent contingency of \$41,428, for a total amount not to exceed \$455,705, if all options are exercised. Motion was unanimous by Members present.

Member Riddell returned at 9:26 a.m.

8. Authorize 40' Bus Donation to Family Services Association for Mobile Fresh Program

M/S (Eaton/Yates) that authorized the CEO/General Manager to donate one (1) surplus New Flyer C40LF bus, Unit #0116, to the Family Service Association (FSA) for use in the Mobile Fresh Program in San Bernardino County. Motion was unanimous by Members present.

G. PUBLIC HEARING

1. Call for Public Hearings – Proposed Route 80 Change to Serve Ontario International Airport

M/S (Graham/Gonzales) that authorized the CEO/General Manager to issue a Call for Public Hearings associated with the proposed service changes on Omnitrans Route 80 to serve Ontario International Airport to be held July 5-6, 2016, and close July 8, 2016. Motion was unanimous by Members present.

H. BOARD BUSINESS

Closed Session

The Board adjourned to Closed Session at 9:26 a.m.

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

2. Conference with Labor Negotiation P. Scott Graham concerning labor negotiations with Teamsters Union Local No. 166 regarding the Maintenance and Administrative/Support Unit, pursuant to Government Code Section 54957.6

Open Session reconvened at 9:32 a.m. with no reportable action.

I. REMARKS AND ANNOUNCEMENTS

There were no remarks or announcements.

J. ADJOURNMENT

The Board adjourned at 9:33 a.m. The next regular meeting is scheduled Wednesday, July 6, 2016, at 8:00 a.m., with location posted on the Omnitrans website and at Omnitrans' San Bernardino Metro Facility.

Prepared by:

Christine Vega, Administrative Secretary

ITEM # _____ E2 _____

**EXECUTIVE COMMITTEE MEETING
MINUTES
APRIL 5, 2016**

A. CALL TO ORDER

The Executive Committee Meeting was called to order by Chair Sam Spagnolo at 8:04 a.m., Tuesday, April 5, 2016.

COMMITTEE MEMBERS ATTENDING

Mayor Pro Tem Sam Spagnolo, City of Rancho Cucamonga – Board Chair
Council Member Ron Dailey, City of Loma Linda – Board Vice Chair
Council Member Ed Graham, City of Chino Hills – via Teleconference
Council Member Penny Lilburn, City of Highland
Council Member John Roberts, City of Fontana
Mayor Pro Tem Alan Wapner, City of Ontario

OTHERS ATTENDING

Carol Greene, Deputy County Counsel

OMNITRANS STAFF ATTENDING

P. Scott Graham, CEO/General Manager
Marge Ewing, Director of Human Resources/Safety & Security
Jeremiah Bryant, Service Planning Manager
Vicki Dennett, Executive Assistant to CEO/General Manager

B. ANNOUNCEMENTS/PRESENTATIONS

Next Committee Meeting: Friday, May 6, 2016, 9:00 a.m.
Omnitrans Metro Facility

C. COMMUNICATIONS FROM THE PUBLIC

There were no communications from the public.

D. POSSIBLE CONFLICT OF INTEREST ISSUES

There were no Conflict of Interest Issues.

E. DISCUSSION ITEMS

1. Approve Executive Committee Minutes – January 8, 2016

M/S (Graham/Roberts) that approved the Executive Committee Minutes of January 8, 2016. Motion was unanimous by Members present.

Member Dailey arrived at 8:06 a.m.

2. Overview of Proposed Administrative Agent Agreement between Valley Transportation Services and Omnitrans presented by Omnitrans Legal Counsel

Deputy County Counsel Carol Greene presented this proposed agreement for discussion. She explained that because she was concerned that not all issues had been identified with regard to settling VTrans' matters, she worked with VTrans' legal counsel, and developed the proposed Administrative Agent Agreement. The template used for the agreement is the same one used by the San Bernardino County Schools. The agreement gives Omnitrans authority over VTrans, but allows them to continue to operate until all matters are handled, such as the closeout of the Caltrans grant, which cannot be transferred to Omnitrans, since VTrans is the entity that applied for and was awarded the funds. The agreement gives Omnitrans the authority to run VTrans, but leaves the liability with VTrans until everything is closed out. The proposed Administrative Agent Agreement has been approved by VTrans Board of Directors, and also has to be approved by the Omnitrans Board of Directors. However, prior to presenting to the Omnitrans Board of Directors, CEO/General Manager Scott Graham will work with legal counsel to revise language in the agreement to ensure that all issues are addressed. Once the agreement is approved by the Omnitrans Board of Directors (scheduled for May 2016), the VTrans Board will appoint Scott Graham as the CEO/General Manager. Once approved, those VTrans employees who received offer letters from Omnitrans will become Omnitrans employees (projected for May 11, 2016). VTrans legal counsel will continue to perform close-out procedures during the transition, as well as handle the non-profit status transfer from VTrans to Omnitrans.

3. Support and Move Forward, Adopt Proposed Change to Personnel Policy #603 – Retirement Plan

This item will be moved forward to the Administrative and Finance Committee seeking its recommendation to the Board of Directors, to adopt proposed revision to the Personnel Policy #603, Retirement Plan, whereby requiring Management/Confidential employees to pay the entire seven percent (7%) employee contribution to the California Public Employees Retirement System (PERS) through payroll deduction beginning July 1, 2016, along with a corresponding seven percent (7%) increase in wages to offset the deduction. Motion was unanimous by Members present.

4. Support and Move Forward, Approve Three New Positions and Adopt Proposed Revision to Personnel Policy #402 – Salary Ranges – Management Confidential Classifications

CEO/General Manager P. Scott Graham explained that the two rail positions would be funded by the Redlands Rail Project Measure I funds through SANBAG. It is anticipated the positions would come on board March 2017, which would be at least 12-18 months before Redlands Rail would go operational. Mr. Graham explained that in February 2016, County Counsel Jean-Rene Basle sent a letter to Omnitrans and the Board of Directors that, after July 1, 2016, the County would no longer provide legal services to the Agency. Therefore, staff has proposed in-house legal counsel beginning July 1, 2016. The Committee discussed the legal position and whether additional clerical support would be necessary to support the attorney. Mr. Graham indicated that he had a plan to provide clerical assistance to the attorney, and Legal Counsel Greene confirmed that part-time clerical support was sufficient and there was no need for legal experience.

The Committee also discussed the need to establish a combined Rail and CTSA Board Committee; however, legal counsel advised against that because the two subjects are vastly different. Instead, at this point, the Committee agreed that matters on these issues would be addressed with the Executive Committee for the time being.

M/S (Wapner/Lilburn) to support and move forward to the Board of Directors, to adopt proposed revisions to Personnel Policy #402, Salary Ranges, Management Confidential Classifications for non-represented employees, effective July 1, 2016, as follows:

- 1.) New Classifications – Approve three (3) new positions to be effective July 1, 2016: Director of Rail Operations, Rail Compliance Officer and In-House Legal Counsel at an annual cost of \$501,511.18 for wages and benefits.
- 2.) Salary Ranges – Increase salary levels I through IX by seven percent (7%) to cover the PERS Employee contribution that will be deducted from Management Confidential employees through payroll deduction. Note: Applies only if the Board of Directors approves proposed changes to Personnel Policy #603 – Retirement Plan.

F. BOARD BUSINESS

The Board Executive Committee adjourned to Closed Session at 8:45 a.m. concerning labor negotiations with Amalgamated Transit Union Local No. 1704 regarding the Coach Operator Unit, pursuant to Government Code Section 54957.6.

The Executive Committee reconvened to Open Session at 9:20 a.m., with no reportable action.

G. REMARKS AND ANNOUNCEMENTS

There were no Remarks or Announcements.

H. ADJOURNMENT

The Executive Committee adjourned at 9:20 a.m. The next Executive Committee Meeting is scheduled Friday, May 6, 2016, at 9:00 a.m., with location posted on the Omnitrans website and at the Omnitrans San Bernardino Metro Facility.

Prepared by:

Christine Vega, Administrative Secretary

ITEM # _____ E3

**ADMINISTRATIVE & FINANCE COMMITTEE
MINUTES, APRIL 14, 2016**

A. CALL TO ORDER

Acting Committee Chair John Roberts called the regular meeting of the Administrative and Finance Committee to order at 8:01 a.m., Thursday, April 14, 2016.

1. Pledge of Allegiance
2. Roll Call

Committee Members Present

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

Committee Members Not Present

Council Member Ed Graham, City of Chino Hills - Chair

Others Present

Mayor Pro-Tem Sam Spagnolo, City of Rancho Cucamonga

OmniTrans Administrative Staff Present

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

Maurice Mansion, Treasury Manager
Mark Crosby, Security & Emergency Preparedness Coordinator

B. ANNOUNCEMENTS/PRESENTATIONS

The next Committee Meeting is scheduled Thursday, May 12, 2016, at 8:00 a.m.

C. COMMUNICATIONS FROM THE PUBLIC

There were no communications from the public.

D. POSSIBLE CONFLICT OF INTEREST ISSUES

There were no conflict of interest issues identified.

E. DISCUSSION ITEMS

1. Approve Administrative & Finance Committee Minutes – March 10, 2016

M/S (Eaton/Spagnolo) that approved the Committee Minutes of March 10, 2016. Motion was unanimous by Members present.

Member Hagman arrived at 8:04 a.m.

2. Recommend the Board of Directors Receive and File Construction Progress Report No. 46 through March 31, 2016 – sbX E Street Corridor BRT Project

IPMO Manager Andres Ramirez presented this item. The three major components of the project are complete and have been placed into operation: E Street Corridor, 60' Articulated Buses, and the Vehicle Maintenance Facility. Additional components to the Project are being worked on and are in different stages of progress: 10th to Highland, and the PA System. There has been zero lost time due to injuries in 495,780 hours worked. Estimated cost at completion is \$188,341,646 out of an approved budget of \$191,706,000.

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

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

Finance Director Don Walker presented this item, discussing the continuous downward trend of Omnitrans' Fuel Cost over the last 15 months, starting at a high of \$0.855 per gallon to the current price of \$0.688 per gallon, \$0.232 below budget. This equates to an estimated monthly saving of \$89,688.00. Mr. Walker will continue to monitor and report to this committee.

This item was received and filed.

Member Robles arrived at 8:09 a.m.

4. Recommend the Board of Directors Adopt Proposed Revision to Personnel Policy #603 – Retirement Plan

Marge Ewing, Director of Human Resources/Safety & Security presented this item, explaining the various ramifications. Medicare is a 1.45% tax; this results in a net annual increase of \$57K+ to Omnitrans. There will be a slight decrease in net pay to the employees.

M/S (Wapner/Roberts) that recommended the Board of Directors adopt proposed revision to the Personnel Policy #603, Retirement Plan, whereby requiring Management/Confidential Employees to pay the entire seven percent (7%) employee contribution to the California Public Employees Retirement System (PERS) through payroll deduction beginning July 1, 2016, along with a corresponding seven percent (7%) increase in wages to offset the deduction. Motion was unanimous by members present.

5. Recommend the Board of Directors Adopt Fiscal Year 2016-17 Annual Budget

Treasury Manager Maurice Mansion presented this item, discussing the FY2017 highlights. Highlights include adding nine additional FTE's and one position upgrade, in addition to the change to Personnel Policy #603 and a proposed wage and salary increase. Forecasted revenue assumptions include Medi-Cal billing, CNG tax credit, and pipeline fuel, all totaling approximately \$2.5 million. The VTrans budget is a separate entity and is not included in the Omnitrans Annual Budget. Member Wapner said he would like to see a plan whereby we can achieve a true 20% farebox recovery ratio rather than rely on Farebox Recovery Ratio (FRR) Measure I funds. We are confident that the steps we are taking to reduce operating costs will allow us to make up FRR losses in the year allowed by the TDA so that we don't lose STA funding. At Member Gilbreath's request, staff will perform some calculations to determine what revenues are lost annually by our various reduced fares; i.e., veterans, seniors and disabled persons.

M/S (Gilbreath/Musser) that recommended the Board of Directors adopt Fiscal Year 2016-17 Annual Budget. Motion was unanimous by Members present.

F. ADJOURNMENT

The Administrative and Finance Committee meeting adjourned at 8:41 a.m.

The next Administrative and Finance Committee Meeting is scheduled Thursday, May 12, 2016, at 8:00 a.m., with location posted on the Omnitrans website and at Omnitrans' San Bernardino Metro Facility.

Prepared by:

Christine Vega, Administrative Secretary

ITEM # E4

DATE: July 6, 2016

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

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Andres Ramirez, Program Manager

**SUBJECT: CONSTRUCTION PROGRESS REPORT NO. 47 THROUGH
APRIL 30, 2016 – sbX E STREET CORRIDOR BRT PROJECT**

FORM MOTION

Receive and file Construction Progress Report No. 47 for the sbX E Street Corridor BRT Project through April 30, 2016.

This item was reviewed by the Administrative and Finance Committee at its June 9, 2016, meeting, and recommended for receipt and file.

BACKGROUND

This is Construction Progress Report No. 47 for the sbX E Street Corridor Project.

CONCLUSION

Receive and file Construction Progress Report No.47 for the sbX E Street Corridor BRT Project through April 30, 2016.

PSG:AR

Attachment

**sbX E Street Corridor
Bus Rapid Transit (BRT) Project
Construction Progress Report No. 47**

April 30, 2016

Prepared By:

**Omnitrans
Integrated Project Management Office**

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

Contractor Contract No.: IPMO11-5

Omnitrans Program Manager: Andres Ramirez



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

I. PROJECT STATUS SUMMARY

A. Project Description

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

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

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

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

B. Summary Status Update

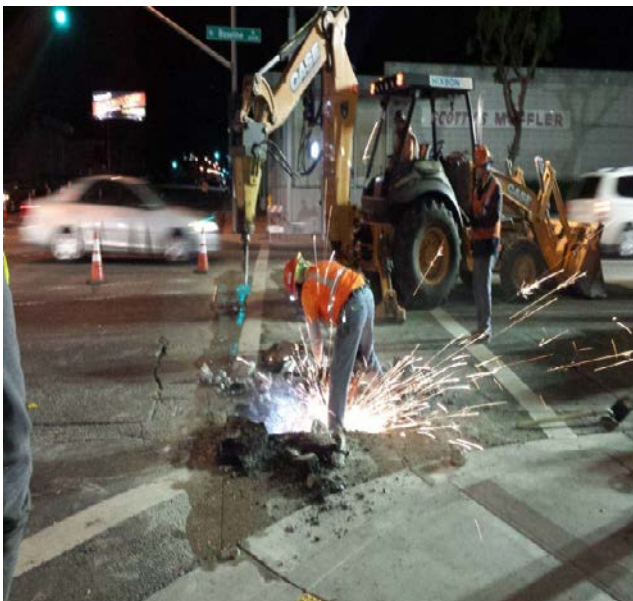
E Street Corridor:

City of San Bernardino Final Acceptance Work and World Oil Modifications:

- Work complete and Final Acceptance Issued.
- This contract is Closed Out.

10th to Highland:

- Project moving forward. Concrete work being completed. .
- Pavement at Baseline started.
- Road construction work to start by June 1.
- Final Completion Date is September 8, 2016.



Excavation Work at Baseline & E Street



Excavation Work at Baseline & E Street



Grinding Asphalt for Repaving



Grinding for Overlay

PA System:

- Contract to be awarded June 1.
- NTP projected in June.

Traffic Signal Synchronization:

- Closeout continues.

Vehicle Maintenance Facility:

Project Final Completion

- Final Acceptance documentation in process.

Completion of Work Removed from Contract

- STV Design firm has submitted a preliminary set of drawings for Omnitrans to review.
- Following review and finalization of drawings, this will go out for bid.

II. PROJECT SCHEDULE

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

	Scheduled Completion	Projected Completion
E Street Corridor		
City of SB Final Work / World Oil	February 2016	Completed
10 th to Highland	June 2016	September 2016
PA System	November 2016	February 2017
Vehicle Maintenance Facility		
Completion Work	May 2016	December 2016

III. SAFETY

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

	Through December 2015
E Street Corridor	
Corridor Construction including final Work	425,441
10 th to Highland	9970
PA System	0
Vehicle Maintenance Facility	64,436
Total	499,847

V. PROJECT BUDGET AND COST

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

Total Project Budget Summary Budget as of April 30, 2015

Approved Budget	\$191,706,000
Cost to Date	\$182,314,770
Estimate to Complete	
Corridor Project	\$ 2,785,936
10 th to Highland	\$ 3,513,959
Estimate at Completion	\$188,614,665

Budget By Contract Packages 30-Apr-2016								(Contract Award + Approved Changes)		(Approved Current Budget- Committed)	Forecast		
											Potential Uses of Contingency		
	PCGA Budget	Approved Current Budget	Authorized for Expenditure	Expended to Date	% of Approved Current Budget	Contracts Awarded	Approved Changes	Committed	Expenditure Authorization Remaining	Remaining Contingency	Pending Commitments/ Potential Changes	Trends/Risks	Estimate At Completion
BRT Construction													
Griffith/Comet JV	90,780,000	84,637,000	87,760,263	81,238,395	96.2%	64,937,853	16,365,742	81,303,595	6,456,668	3,333,405	-	-	81,303,595
Art			68,000	68,000		68,000	-	68,000	-	(68,000)	-	-	68,000
Other Direct Payments			48,401	67,353		48,401	-	48,401	-	(48,401)	-	-	48,401
Delineators				70,991		89,943	(18,952)	70,991	(70,991)	(70,991)	-	-	70,991
PA System				-		-	-	-	-	-	620,263	-	620,263
Miscellaneous Work				-		17,500	-	17,500	(17,500)	(17,500)	100,000	125,000	242,500
BRT Design													
Parsons	19,193,400	17,849,400	18,097,876	19,019,722	106.9%	16,464,092	3,725,637	20,189,729	(2,091,853)	(2,340,329)	(1,334,545)	-	18,855,185
PA System				67,500		83,000	-	83,000	(83,000)	(83,000)	8,300	-	91,300
Miscellaneous Work				-		-	-	-	-	-	-	-	-
VMF Construction - USS Cal Builders	5,370,000	8,131,000	14,498,152	14,537,925	178.8%	10,579,786	3,955,539	14,535,325	(37,173)	(6,404,325)	750,000	-	15,285,325
VMF Design													
STV	1,007,600	1,007,600	1,418,132	1,862,813	186.7%	951,029	1,048,727	1,999,756	(581,624)	(992,156)	-	-	1,999,756
Carlin Environmental			27,800	18,380		10,000	9,800	19,800	8,000	(19,800)	-	-	19,800
Vehicles Design & Manufacturing-N.F.	16,628,000	16,628,000	15,978,093	15,192,458	92.4%	15,483,572	(436,483)	15,047,089	931,004	1,580,911	-	-	15,047,089
Other Vehicle Equipment			318,853	173,484		318,853	-	318,853	-	(318,853)	-	-	318,853
ROW Acquisition Services-SANBAG	6,532,000	10,357,000	11,738,400	12,121,246	117.0%	11,671,135	350,111	12,021,246	(282,846)	(1,664,246)	-	-	12,021,246
3rd Party Utilities Design & Reloc.		1,003,000	1,157,223	1,174,205	117.1%	1,174,205	-	1,174,205	(16,982)	(171,205)	50,000	-	1,224,205
Project Admin. And Management													
Jacobs	6,638,000	6,632,000	11,852,647	12,969,303	195.6%	3,898,769	9,070,534	12,969,303	(1,116,656)	(6,337,303)	-	-	12,969,303
Other													
IPMO	17,624,000	15,012,450	14,722,701	13,790,802	91.9%	15,172,701	(300,000)	14,872,701	(150,000)	139,749	(700,000)	-	14,172,701
Insurance	1,113,000	1,112,000	500,000	-	0.0%	500,000	(500,000)	-	500,000	1,112,000	-	-	-
Legal-BB&K, County	2,525,450	1,000,000	1,000,000	372,864	37.3%	1,000,000	(527,136)	472,864	527,136	527,136	-	-	472,864
In Kind Contributions	8,080,550	8,080,550	8,080,550	8,401,239	104.0%	8,401,239	-	8,401,239	(320,689)	(320,689)	-	-	8,401,239
Survey	1,464,000	1,463,000	464,000	-	0.0%	25,000	(25,000)	-	464,000	1,463,000	-	-	-
Start-Up	720,000	720,000	700,000	-	0.0%	-	-	-	700,000	720,000	700,000	-	700,000
Sub-Total	177,676,000	173,633,000	188,431,091	181,146,679	104.3%	150,895,078	32,718,519	183,613,597	4,817,494	(9,980,597)	194,018	125,000	183,932,615
Unallocated Contingency	14,030,000	18,073,000	4,498,476					9,980,597		8,092,403			7,773,385
10th to Highland Projected Costs			4,606,687	1,168,091	25.4%	3,417,000	65,226	3,482,226	1,124,462	(3,482,226)	1,149,825	50,000	4,682,050
Remaining Unallocated Contingency													3,091,335
Total	191,706,000	191,706,000	188,539,302	182,314,770	95.1%								191,706,000

IPMO/sbX Project Cost Report										
Period Ended 30-Apr-2016										
Description	Current Budget	Approved Current Budget	Expenditures		Remaining Budget	Committed		Estimate to Complete	Estimate at Completion	Budget Forecast Variance
			\$	%			%			
BRT Construction	\$ 84,637,000	\$ 84,637,000	\$ 81,444,739	96.2%	3,192,261	\$ 81,508,487	96.3%	\$ 845,263	\$ 82,353,749	\$ 2,283,251
Vehicle Maintenance Facility (VMF) Construction	\$ 8,131,000	\$ 8,131,000	\$ 14,537,925	178.8%	(6,406,925)	\$ 14,535,325	178.8%	\$ 750,000	\$ 15,285,325	\$ (7,154,325)
Vehicles - Design & Manufacturing	\$ 16,628,000	\$ 16,628,000	\$ 15,365,942	92.4%	1,262,058	\$ 15,365,942	92.4%	\$ -	\$ 15,365,942	\$ 1,262,058
ROW Acquisition Services	\$ 10,357,000	\$ 10,357,000	\$ 12,121,246	117.0%	(1,764,246)	\$ 12,021,246	116.1%	\$ -	\$ 12,021,246	\$ (1,664,246)
3rd Party Utilities Design & Relocation	\$ 1,003,000	\$ 1,003,000	\$ 1,174,205	117.1%	(171,205)	\$ 1,174,205	117.1%	\$ 50,000	\$ 1,224,205	\$ (221,205)
BRT Design	\$ 17,849,400	\$ 17,849,400	\$ 19,087,222	106.9%	(1,237,822)	\$ 20,272,729	113.6%	\$ (1,326,245)	\$ 18,946,485	\$ (1,097,085)
VMF Design	\$ 1,007,600	\$ 1,007,600	\$ 1,881,193	186.7%	(873,593)	\$ 2,019,556	200.4%	\$ -	\$ 2,019,556	\$ (1,011,956)
Other Professional, Technical & Management Services	\$ 34,020,000	\$ 34,020,000	\$ 35,534,207	104.5%	(1,514,207)	\$ 36,716,107	107.9%	\$ -	\$ 36,716,107	\$ (2,696,107)
Allocated Contingency (Construction Contract)	\$ -	\$ -			-	\$ -	0.0%	\$ -	\$ -	\$ -
SUB-TOTAL	\$ 173,633,000	\$ 173,633,000	\$ 181,146,679	104.3%	(7,513,679)	\$ 183,613,597	105.7%	319,018	183,932,615	(10,299,615)
Unallocated Contingency	\$ 18,073,000	\$ 18,073,000	\$ -		18,073,000	\$ -	0.0%	\$ -	\$ -	\$ 18,073,000
10th to Highland	\$ -	\$ 4,682,050	\$ 1,168,091	24.9%	3,513,959	\$ 3,417,000	73.0%	\$ 3,513,959	\$ 4,682,050	\$ -
TOTAL	\$ 191,706,000	\$ 191,706,000	\$ 182,314,770	95.1%	\$ 14,073,280	\$ 187,030,597	97.6%	\$ 3,832,977	\$ 188,614,665	\$ 7,773,385

ITEM # E5

DATE: July 6, 2016

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

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE RELEASE – IFB-MNT17-15
PAINT AND CARPET REPLACEMENT AND INSTALLATION**

FORM MOTION

Authorize the CEO/General Manager to release Invitation for Bids IFB-MNT17-15 for the provision of Paint and Carpet Replacement and Installation.

BACKGROUND

Omnitrans' Capital Improvement Program (CIP) includes the replacement of approximately 3,260 square feet of flooring and interior and exterior painting throughout Omnitrans' "I" Street Paratransit facility. The flooring in these areas is worn and in need of repairs. Paint, roof tile restoration, and carpet replacement will help to maintain the aesthetic quality and appearance of this facility.

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 \$116,500.

FUNDING SOURCE

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

FUNDING	GRANT #	YEAR	PROJECT NAME	INTERNAL ORDER	AMOUNT
FTA	CA-90-Z009-00	2013	I Street Paint and Carpet	D1340305F	\$ 93,200
STA	Prop 1B	2013	I Street Paint and Carpet	D1340335B	\$ 23,300
Total					\$116,500

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

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

CONCLUSION

By proceeding with this solicitation, Omnitrans will maintain the professional quality and appearance of facilities.

PSG:JMS:KT

Omnitrans Puts Stock in Vending Machines

VENDING MACHINES aren't just for chips and candy anymore. Omnitrans in San Bernardino, CA, plans to snack on cost savings and improved efficiencies dispensed by newly installed parts vending machines that stock frequently used items like safety goggles, gloves and electrical tape.

Omnitrans mechanics can quickly access the parts they need with a swipe of an ID badge. The transaction details flow to an inventory management system which tracks supply levels and usage data in real time. The parts vendor, Fastenal Company, monitors the inventory remotely and restocks when supplies get low.

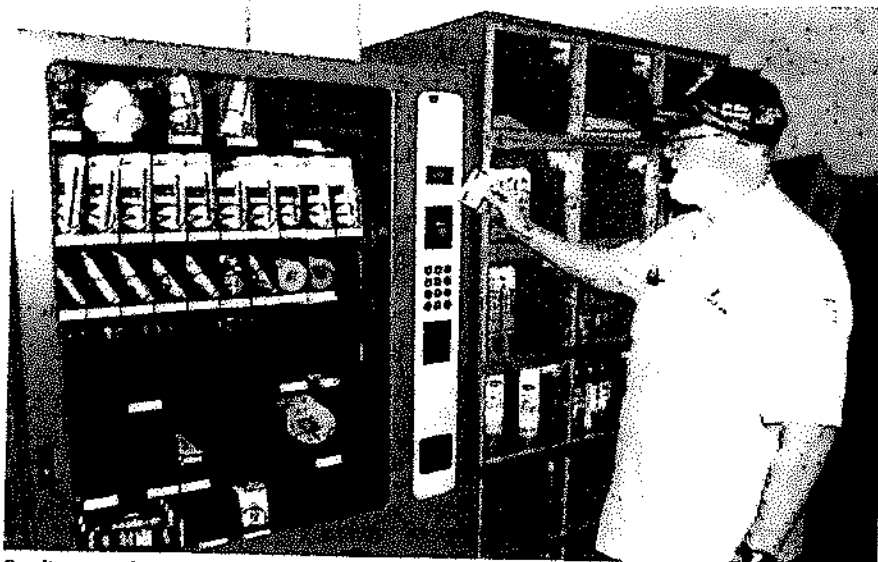
"The vending machines are custom configured to vend everyday supplies like gloves, batteries, spray cans and abrasives," said Omnitrans Materials Manager Rick Barone. "These small-dollar items can add up to big spending annually. Because employees must swipe their ID cards to get products out of the

machines, we are able to set controls on who can access certain items and limit how much they can vend over time."

Other benefits of the program include the following:

- **Cost Reduction:** With vending machine controls and reporting, Omnitrans projects a 25 percent to 35 percent savings annually. So far, the agency reports a reduction in use of items stocked in the first test vending machine and plans to add more machines.
- **Increased Productivity:** The machines provide 24/7 availability of products in closer proximity to the end user.
- **Automated Ordering:** Fastenal monitors and refills the machines in a hands-free, paper-free process. Also, Fastenal owns the product until the moment it's vended, so inventory costs are minimized. Omnitrans maintains more than 9,000 parts to keep its 174-bus fleet

—Literally



Omnitrans employees swipe their ID badge to gain access to frequently used items now stocked in vending machines.

on the road and running safely, and it stocks such items as safety vests, dust masks, O-rings, sandpaper, drill bits, nuts and bolts, electrical supplies and janitorial supplies. All are crucial to job performance and, typically, they are

needed immediately. Historically, Omnitrans purchased such items from multiple vendors, which required significant staff time to order, receive, stock and issue each item—plus process invoices for multiple vendors.

NEWS RELEASE

For Immediate Release
May 18, 2016

Contact: Chad Chitwood
(202) 496-4841
cchitwood@apta.com

Dallas Area Rapid Transit Wins Top Honors at 2016 APTA International Bus Roadeo

*Best Transit Bus Operator, Maintenance Crew, Grand Champion
and Customer Service Challenge Winners Named*

Charlotte, NC – Dallas Area Rapid Transit of Dallas, TX took the top spot this year and was crowned the Grand Champion at the 41st Annual International Bus Roadeo. The Grand Champion Award recognizes the system with the highest combined bus operator and maintenance team score. The Kansas City Area Transportation Authority of Kansas City, MO team took second place overall achievement honors, while the team from Washington Metropolitan Area Transit Authority of Washington, DC won third place overall achievement honors. The event was held in conjunction with the American Public Transportation Association's (APTA) Bus and Paratransit Conference in Charlotte, NC this week.

"Rain or shine those bus operators and maintainers strive to do their job to make getting around town safe and enjoyable for all their riders," said APTA Chair Valarie J. McCall. "Going above and beyond to give the best service to their riders isn't something they do occasionally, but what they wake up and do every day."

"Those who operate and maintain a fleet of buses are the true unsung heroes of our industry," said APTA Acting President and CEO Richard White. "These professionals deserve our thanks year round because they make a difference every day in the lives of those in our community by providing essential public transit options that are safe and reliable."

In the 40-foot bus competition, which is the ultimate test of a bus operator's driving skills, Jesus Rodriguez driving for Dallas Area Rapid Transit (Dallas, TX) was named best driver in North America. He beat out 39 other competitors to win the first-place award. Taking second place in the 40-foot bus competition was Benito Zavalza driving for Omnitrans (San Bernadino, CA). Third place was claimed by Daniel Schmidt driving on behalf of Ben Franklin Transit (Richland, WA).

In the 35-foot bus competition, Gabe Beliz driving for Ben Franklin Transit (Richland, WA) won first place and was crowned the best bus operator in North America in this category. He beat out 22 other competitors. Taking second place was Howard Yoder driving for Central Ohio Transit Authority (Columbus, OH). Claiming third place in the competition was Abdelkader Tenouri, driving for the Capital Metropolitan Transportation Authority (Austin, TX).

Twenty-six teams competed in the Maintenance Competition, which tests mechanics' abilities to troubleshoot mechanical problems and fix them quickly. The Central Florida Regional Transportation Authority (LYNX) (Orlando, FL) won first place in the maintenance competition. The team from Washington Metropolitan Area Transportation Authority (Washington, DC) earned a second place finish and the team from Kansas City Area Transportation Authority (Kansas City, MO) received third place honors.

In addition to recognizing excellence among bus operators and mechanics, APTA also crowned Bennie Williams of the Maryland Transit Administration (Baltimore, MD) as the first place winner of the Customer Service Challenge Awards. This competition judges professionalism, customer service skills, and problem-solving creativity.

The International Bus Roadeo is comprised of bus operators and mechanics from public transit systems across North America who participate in separate competitions, which showcase their skills in safe driving and vehicle maintenance. The Operator Competition includes events such as judgment stops, turning, and clearing obstacles. The Mechanic Competition requires skills in the identification of defects in engine, transmission, brake, and HVAC modules. The pre-trip inspection for operators and multiplex troubleshooting for mechanics are incorporated as scored events.

#

The American Public Transportation Association (APTA) is a nonprofit international association of 1,500 public and private sector organizations, engaged in the areas of bus, paratransit, light rail, commuter rail, subways, waterborne services, and intercity and high-speed passenger rail. This includes: transit systems; planning, design, construction, and finance firms; product and service providers; academic institutions; transit associations and state departments of transportation. APTA is the only association in North America that represents all modes of public transportation. APTA members serve the public interest by providing safe, efficient and economical transit services and products.

What are the next big projects in line for the Inland Empire?

By Imran Ghori
Staff Writer

Metrolink's long-awaited Perris Valley line will open Monday bringing commuters another transportation choice from Riverside to Perris and to destinations beyond.

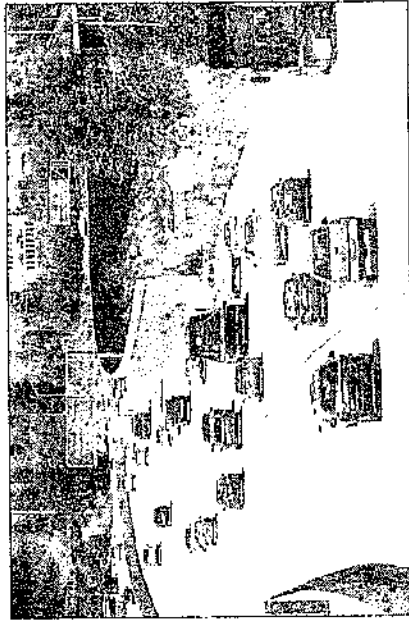
The 24-mile addition with a \$248 million price tag, had been a priority for transportation officials for years, well before construction began in 2013.

So too are other big Inland Empire transportation projects - from freeway work to bus service - looming on the horizon. Here's a look at five of them:

More lanes for the 10

Project: I-10 corridor in San Bernardino County.

Description: Two alternatives are being studied to improve traffic flow on the 10 through most of San Bernardino County. One would add carpool lanes on a 25-mile stretch from Ontario to Redlands. The other would add two toll lanes on a 33-mile section from the Los Angeles County line to



STAFF PHOTO

Among projects planned for the Inland Empire are the addition of lanes to the 10 Freeway.

Redlands.

Why it's needed: The corridor has become a major trucking route between the Southern California ports and the rest of the nation, with about 20,000 trucks each day. The project aims to ease congestion.

Timeline: Construction will start in 2018. The first phase should be done by 2022 and the second phase completed by 2024.

Agency: San Bernardino Associated Governments.

Cost estimate: \$650 million to \$1.8 billion, depending on which alternative is

green lighted.

Rail for Redlands

Project: Redlands Passenger Rail.

Description: The 9-mile route will link to Metrolink trains, which today end at the Santa Fe Depot in San Bernardino. It would do so with a separate project extending rail service to downtown San Bernardino at E Street. The Redlands line will feature five stations through San Bernardino, Loma Linda and Redlands, ending at the south end of the University of Redlands.

Service will run from 5 a.m. to 10 p.m., with trains every 30 minutes during peak commute hours.

Why it's needed: The project will bring trains through the East Valley corridor, offering an alternative to driving and connecting to Metrolink lines that run to Los Angeles and Orange counties.

Agency: San Bernardino Associated Governments.

Timeline: Construction could start in 2017, with passengers hopping on board beginning in 2020.

Cost estimate: \$250 million.

De-congesting the 15

Project: I-15 Express Lanes project.

Description: Construction of one to two toll lanes on a 14.6-mile stretch of the 15 between Cajalco Road, south of Corona, to the 60 near the Riverside County-San Bernardino County line.

Why it's needed: To improve traffic flow and reduce congestion on the heavily-traveled route that goes from south of Corona, through Norco, East-

vale, Jurupa Valley to just south of the San Bernardino County line.

Agency: Riverside County Transportation Commission, Caltrans.

Timeline: Construction should start after the 91 project ends, in 2018. The estimated completion date is 2020.

Cost estimate: \$425 million to \$450 million.

91 overhaul

Project: 91 toll lanes.

Description: Construction of two toll lanes and one general-use lane on eight miles from the 15 interchange in Corona to the Orange County line.

Why it's needed: To provide relief on one of the most congested routes in Southern California.

Agency: Riverside County Transportation Commission.

Timeline: Construction began in early 2014 and is expected to be complete in 2017.

Cost estimate: \$1.3 billion.

Rapid Riverside

Project: Downtown Riverside Stop Improvement/Rapid Link.

Description: Plans call for new bus stops and upgrades to existing ones at 26 locations in downtown Riverside, while shifting away from its downtown terminal. The RapidLink project will add express bus service along Magnolia and University avenues in the city.

Why it's needed: The changes in Riverside are part of a 10-year plan aiming for more frequent buses, later hours, shorter travel times and better timing of transfers. RapidLink will bring quicker service to two key corridors.

Timeline: Construction will start in July and should be done by November for the downtown project. RapidLink construction will begin in July with busing starting in September 2017.

Agency: Riverside Transit Agency.

Cost estimate: \$1.2 million for Riverside Downtown Stop Improvement Project; \$1.5 million for RapidLink.

THE SUN
June 6, 2016

RAIL TO REDLANDS

City agrees to pay more for station platform

By Sandra Emerson

sandra.emerson@langnews.com
@TheFactsSandra on Twitter

REDLANDS » Dissatisfied with proposals for the downtown rail station platform, city leaders are looking for a design that would better represent Redlands.

The \$250 million Redlands Passenger Rail Project, led by the San Bernardino Associated Governments, includes funding to design and build the downtown Redlands station platform, but the three proposed designs do not complement downtown's character, Mayor Pro Tem Jon Harrison said.

The station site is north of the historic Redlands Santa Fe Depot between Eureka and Orange streets.

"I feel that our city is better served by investing some funds in making that stop more appeal-

ing and more attractive and more consistent with our downtown area," Harrison said.

On Tuesday, the City Council agreed to spend up to \$150,000 for the additional work, which will be done by HDR Engineering Inc., the firm hired in October to design the project.

SanBAG's Transit Committee on Thursday recommended the SanBAG board of directors approve the request.

Harrison, who is on the Redlands Passenger Rail subcommittee with Councilwoman Pat Gilbreath, said the panel recommends the design be more reflective of the architectural style of the Santa Fe Depot.

"I appreciate being in the planning process because we have to make sure this is compatible with downtown," said Gilbreath, who described the design as "stick figure."

"Which is not an architectural term, but that's what it looks like to me," she said.

The rail project proposes to extend rail service 9 miles from downtown San Bernardino to the University of Redlands.

There are four stations planned: Waterman Avenue; New York Street near Esri, at the company's expense; downtown Redlands; and the University of Redlands.

SanBAG would fund the design and construction of the basic platform in downtown Redlands and the city would be responsible for funding additional costs associated with the design enhancements.

Councilman Paul Barich voted against allocating funding Tuesday because the city has repeatedly told residents that city funds would not be used. The rail project is

funded mostly through Measure I, a half-cent sales tax.

"Not that I'm against the rail, but we've been telling the public it's already been funded," Barich said. "Now we have to have \$150,000 for design. I'm a little perplexed why we have to do this."

The \$150,000 could come from the sale proceeds of city-owned property at San Bernardino Avenue and Judson Street to Rancho Cucamonga-developer Diversified Pacific, according to the staff report. But the sale proceeds — \$517,000 — could be used for other work, such as repairing sidewalks and trimming trees, the staff report said.

If the city finds another funding source for the station platform, the \$150,000 allocation could be revisited, according to the report.

Permanent transit tax proposed for L.A. County

THE SUN
June 12, 2016

By Dana Bartholomew
dana.bartholomew@
langnews.com
@DN_DanaBart on Twitter

A sweeping transit plan unveiled by Metro officials Friday called for much more than just unchoking the strangled freeways across Los Angeles County.

It called upon voters to support the most ambitious traffic-management plan in the nation through a permanent transit sales tax. If approved by the Metro board this month, a newly named Los Angeles County Traffic Improvement Plan measure will appear on the November ballot.

"If we don't fix it, we'll be eaten alive by congestion," declared Phillip A. Washington, CEO of the Los Angeles County Metropolitan Transportation Authority, during a late afternoon media briefing downtown, as commuters sat bumper to bumper outside. "It is the most aggressive initiative in the country today ... and the most balanced."

"It'll return billions to local governments and look after our seniors, students, veterans. This tackles everything — from state-of-good repair to transit operations."

The new transit plan, unveiled after months of community meetings, would replace a 1-cent transit sales tax proposal introduced last March that called for raising \$120 billion over the next 40 years. But instead of asking voters to support a half-cent Measure R extension with another half-cent tax through 2057, the transit agency now recommends a "no sunset" measure that would raise billions of transit dollars in perpetuity.

"If we're going to do something real about traffic, we need to act now —

and we need to be bold," said Los Angeles Mayor Eric Garcetti, in a statement. "Our plan would create a true, regional transportation system, and make critical local improvements in every part of our county."

"This will not only help ease congestion, it will bring good paying jobs to our communities."

The new traffic improvement plan would inject billions in new commuter rail, transit operations and maintenance, transit officials said, which could have been hampered by a 40-year plan.

It would return up to 20 percent to 88 cities across the county to fix roads, repair potholes and add bicycle and pedestrian paths.

In addition, it would lower the agency's debt risk while allowing the MTA to accelerate nine transit projects for a combined savings of \$9.2 billion, while upgrading at least three proposed bus lines to light rail.

For example, a plan to create grade separations on the Orange Line busway across the San Fernando Valley would break ground five years sooner, as would a Green Line to Torrance, while a Crenshaw/LAX line would be moved up eight years.

A signature project would include an \$8 billion Sepulveda Pass tunnel to relieve the 101 Freeway between west Los Angeles and the Valley. A 710 Freeway tunnel will not be funded, Washington said.

"We commend the Metro board for ensuring that the Valley is recognized in the final expenditure plan," said Stuart Waldman, president of the Valley Industry & Commerce Association, a business group that recommended key transit improvements.

Some critics, however,

said it fails to provide some key transit links into the next century.

In the Valley, for instance, there were no plans to link 50,000 students, staff and faculty at Cal State Northridge to a new busway or rail line nearby.

"A transportation plan that does not provide for students, faculty and staff at CSUN is malpractice," said state Sen. Bob Hertzberg, D-Van Nuys, after the meeting. "To ask the voters of the San Fernando Valley to pay taxes (for a measure) that does not support CSUN students or its neighbors and community is nothing more than a stickup."

Others said the transit proposal put off a badly needed widening of the Golden State Freeway between the 605 and 710 freeways until 2036.

"Unless Metro acknowledges the urgent importance of this project to the Gateway Cities ... we have no option but to reconsider our support," said Mike Egan of the I-5 Consortium Cities Joint Powers Authority.

The revised Metro transit plan would allow the Eastside Gold Line Extension to be built to both South El Monte and Whittier, while paying for a new freeway and high-speed rail corridor from the Antelope Valley to San Bernardino County.

It would also upgrade the proposed dedicated bus lines such as one planned between North Hollywood to Pasadena to light rail.

Washington said a survey of residents showed that 72 percent of L.A. County residents would support a ballot measure with a permanent tax, allowing sustainable transportation funding, unlike some other regions of the country with ailing transit systems.

ITEM # F1

DATE: July 6, 2016

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

FROM: P. Scott Graham, CEO/General Manager

SUBJECT: CEO/GENERAL MANAGER'S REPORT

Progress continues on the transition of VTrans to Omnitrans. Special Transit Services Programs Coordinator Kim Perez and I have met with two of the Community Partners and have three more scheduled in early July. Expect to conclude the initial meetings with the remaining three partners by the end of July. Continue to work with VTrans' legal counsel on assignment of the agreements to Omnitrans, as well as closeout of the office space lease. Initial panel interviews for a Special Transit Services Directors are scheduled Thursday, July 7, 2016. Included in the panel interview will be the Consolidated Transportation Services Coordinator Virginia Worley from the Riverside Transit Agency.

The initial panel interviews for the Deputy General Manager position are scheduled Wednesday, July 13. SANBAG Executive Director Ray Wolfe and County Counsel Carol Greene are scheduled to participate in this first round of interviews.

I attended the APTA Rail Conference in Phoenix, Sunday, June 19 – through Wednesday, June 23. Joining me from Omnitrans were members of our Safety & Regulatory Compliance team Barbara Erwin, Mark Crosby and Ross Hrinko. SANBAG staff, Board Member Wapner, and team members from SANBAG's consultant team, RailPros, were also in attendance. Leslie Rogers, FTA Region IX Administrator, was also in attendance and verbally commented how pleased he was that Omnitrans and SANBAG were partnering on the Redlands Rail Project.

The Amended and Restated Joint Powers Agreement has been approved by all member entities and will be forwarded to the Secretary of State for approval. Thank you to all Board Members for your support in this process! Once approved by the State, Omnitrans will begin working with legal counsel to look at Omnitrans statutory structure to mitigate risk to member agencies to prepare for the advent of rail service as suggested by members of the Board of Directors during the JPA amendment process.

PSG

ITEM # _____ F2 _____

DATE: July 6, 2016

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

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

SUBJECT: AUTHORIZE AWARD – CONTRACT ITS16-93, INTERNET SERVICES

FORM MOTION

Authorize the CEO/General Manager to award Contract ITS16-93 to Level 3 Communications, LLC of Broomfield, CO, for the provision of Internet Services at the speed of 100Mbps for a three-year period in the amount of \$62,604, with the option to increase the speed up to 1024Mbps for an additional amount not to exceed \$33,228, and \$15,000 for the Dynamic Capacity, bringing the total contract not-to-exceed amount to \$110,832, plus a ten percent contingency of \$11,083, for a total amount not to exceed amount of \$121,915.

BACKGROUND

On December 2, 2015, Omnitrans' Board of Directors authorized the release of Request for Proposals RFP-ITS16-93 for a multi-year business class contract for high-speed broadband connectivity to the internet, internet protocol (IP) and domain name server (DNS) hosting services at the East Valley facility. Notices were published in two local newspapers of general circulation and the solicitation was posted on Omnitrans' online bidding system. Six proposals were received by the May 4, 2016 deadline, and five were deemed responsive.

The following firms were evaluated in accordance with the selection criteria included in the RFP and are ranked from highest score to lowest score:

Selection Criteria	Total Percentage Points Possible	Level 3 Communications, LLC	Time Warner Cable	Airespring, Inc.	Cogent Communications, Inc.	Network Services Solutions, LLC
Solution Completeness	30	28.00	23.00	24.00	21.00	16.00
Understanding of the Project	20	18.67	15.33	16.67	15.33	10.67
Implementation Experience	20	19.33	18.00	13.33	17.33	13.33

Selection Criteria	Total Percentage Points Possible	Level 3 Communications, LLC	Time Warner Cable	Airespring, Inc.	Cogent Communications, Inc.	Network Services Solutions, LLC
Technical Total	70	66.00	56.33	54.00	53.67	40.00
Base Price	15	11.06	15.00	11.36	6.76	14.04
Options Price	15	15.00	10.12	9.98	11.96	9.66
Grand Total	100	92.06	81.45	75.34	72.39	63.70

Level 3 Communications scored highest technically and overall. The firm offers a thorough and expandable solution to allow Omnitrans the ability to adjust the bandwidth on an as-needed basis and has over twenty-five years of experience as a global services provider.

The three-year cost for internet services is as follows:

Mbps	Monthly Fee	3-Year Total
100	\$1,739.00	\$62,604.00
101-500	\$2,099.50	\$75,582.00
501-1024	\$2,662.00	\$95,832.00

The contract includes a not-to-exceed amount of \$15,000 for the Dynamic Capacity feature, which is the expandable solution that allows Omnitrans to temporarily adjust the bandwidth as needed. The fees are based on the hourly increased Mbps.

Omnitrans' Independent Cost Estimate of \$144,500 was based on market research for internet services over a five year period. Level 3 Communications' pricing is within the competitive range and therefore is deemed fair and reasonable.

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

FUNDING SOURCE

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

Department 1320
Expenditure Code 505040

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

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

CONCLUSION

By proceeding with this award, Omnitrans will be able to upgrade the existing internet capabilities.

PSG:JMS:CVM

Master Service Agreement

(SFMSA Version 6.0 – December 16, 2015)

This Master Service Agreement ("Agreement") is made as of the last date of full execution by the parties as indicated below (the "Effective Date"), between **LEVEL 3 COMMUNICATIONS, LLC** ("Level 3") and **OMNITRANS** ("Customer"). This Agreement provides the general terms and conditions applicable to Customer's purchase of communications services ("Service") from Level 3.

ARTICLE 1. ORDERS FOR AND DELIVERY OF SERVICE

1.1 Submission and Acceptance of Customer Order(s). Customer may submit requests for Service in a form designated by Level 3 ("Customer Order"). Customer Orders shall contain the duration for which Service is ordered ("Service Term"). Service will continue on a month to month basis at the expiration of the Service Term at Level 3's then current rates. Level 3 will notify Customer of acceptance of the Customer Order by delivering (in writing or electronically) the date by which Level 3 will install Service (the "Customer Commit Date") or by delivering the Service. Renewal Customer Orders will be accepted by Level 3's continuation of Service. If Customer submits Customer Orders electronically, Customer shall assure that any passwords or access devices are available only to those having authority to submit Customer Orders. Customer will pay Level 3's then current charges for moves, adds or changes agreed to by Level 3 respecting any Customer Order or Service.

1.2 Credit Approval and Deposits. Customer will provide Level 3 with credit information as requested. Level 3 may require Customer to make a deposit as a condition of Level 3's acceptance of any Customer Order or continuation of: a) usage-based Services; or b) non-usage based Service where Customer fails to timely pay Level 3 hereunder or Level 3 reasonably determines that Customer has had an adverse change in financial condition. Deposits will not exceed 2 months' estimated charges for Service and are due upon Level 3's written request. When Service is discontinued, the deposit will be credited to Customer's account and the balance refunded.

1.3 Customer Premises; Title to Equipment. If access to non-Level 3 facilities is required for the installation, maintenance, grooming, movement, upgrade and/or removal of Level 3 network or equipment, Customer shall, at its expense, secure such right of access and shall arrange for the provision and maintenance of power and HVAC as needed for the proper operation of such equipment and network. Title to equipment (including software) provided by Level 3 remains with Level 3. Customer will not create or permit to be created any encumbrances on Level 3's equipment.

1.4 Scheduled Maintenance and Local Access. Scheduled maintenance will not normally result in Service interruption. If scheduled maintenance requires Service interruption, Level 3 will: (i) provide Customer 7 days' prior written notice, (ii) work with Customer to minimize such interruptions and (iii) use commercially reasonable efforts to perform such maintenance between midnight and 6:00 a.m. local time. If third party local access services are involved in or connected to the Services, Customer will: (i) provide Level 3 with circuit facility and firm order commitment information and design layout records to enable cross-connects to Level 3 Service(s) (provided by Level 3 subject to applicable charges), (ii) cooperate with Level 3 (including but not limited to changing demarcation points and/or equipment and providing necessary LOA's) respecting circuit grooming or re-provisioning, and (iii) where a related Service is disconnected, provide Level 3 a written disconnection firm order commitment from the relevant third party provider. Level 3 may re-provision any local access circuits from one off-net provider to another or to the Level 3 owned and operated network (on-net), and such changes shall be treated as scheduled maintenance, provided that Level 3 shall provide Customer 30 days' notice of such activity.

ARTICLE 2. BILLING AND PAYMENT

2.1 Commencement of Billing. Level 3 will deliver written or electronic notice (a "Connection Notice") to Customer when Service is installed, at which time billing will commence ("Service Commencement Date"). If Customer notifies Level 3 within 3 days after delivery of the Connection Notice that Service is not functioning properly, Level 3 will correct any deficiencies and, upon Customer's request, credit Customer's account in the amount of 1/30 of the applicable MRC for each day the Service did not function properly. If Level 3 cannot complete installation due to Customer delay or inaction, Level 3 may begin charging Customer for the Service and Customer shall pay such charges which will appear on Customer's first invoice following the Service Commencement Date.

2.2 Payment of Invoices and Disputes. Invoices are delivered monthly and due 30 days after the invoice date. Fixed charges are billed in advance and usage-based charges are billed in arrears. Billing for partial months is prorated. Past due amounts bear interest at 1.5% per month or the highest rate allowed by law (whichever is less). Customer is responsible for all charges respecting the Service, even if incurred as the result of unauthorized use. If Customer reasonably disputes an invoice, Customer must pay the undisputed amount and submit written notice of the disputed amount (with details of the nature of the dispute and the Services and invoice(s) disputed). Disputes must be submitted in writing within 90 days from the date of the invoice. If the dispute is resolved against Customer, Customer shall pay such amounts plus interest from the date originally due.

2.3 Taxes and Fees. Excluding taxes based on Level 3's net income, Customer is responsible for all taxes and fees arising in any jurisdiction imposed on or incident to the provision, sale or use of Service, including but not limited to value added, consumption, sales, use, gross receipts, withholding, excise, access, bypass, ad valorem, franchise or other taxes, fees, duties or surcharges (including regulatory and 911 surcharges), whether imposed on Level 3 or a Level 3 affiliate, along with similar charges stated in a Customer Order (collectively "Taxes and Fees"). Some Taxes and Fees, and costs of administering the same, are recovered through imposition of a percentage surcharge(s) on the charges for Service. If Customer is required by law to make any deduction or withholding of withholding Taxes from any payment due hereunder to Level 3, then, notwithstanding anything to the contrary contained in this

Agreement, the gross amount payable by Customer shall be increased so that, after any such deduction or withholding for such withholding Taxes, the net amount received by Level 3 will not be less than Level 3 would have received had no such deduction or withholding been required. Charges for Service are exclusive of Taxes and Fees. Customer may present Level 3 with an exemption certificate eliminating Level 3's liability to pay certain Taxes and Fees; Level 3 will give effect thereto prospectively.

2.4 Regulatory and Legal Changes. If changes in applicable law, regulation, rule or order materially affect delivery of Service, the parties will negotiate appropriate changes to this Agreement. If the parties cannot reach agreement within 30 days after Level 3's notice requesting renegotiation: (a) Level 3 may, on a prospective basis after such 30 day period, pass any increased delivery costs on to Customer and (b) if Level 3 does so, Customer may terminate the affected Service on notice to Level 3 delivered within 30 days.

2.5 Cancellation and Termination Charges.

(A) Customer may cancel a Customer Order (or portion thereof) prior to the delivery of a Connection Notice upon written notice to Level 3 identifying the affected Customer Order and Service. If Customer does so, Customer shall pay Level 3 a cancellation charge equal to the sum of: (i) for "off-net" Service, third party termination charges for the cancelled Service; (ii) for "on-net" Service, 1 month's monthly recurring charges for the cancelled Service; (iii) the non-recurring charges for the cancelled Service; and (iv) Level 3's out of pocket costs (if any) incurred in constructing facilities necessary for Service delivery.

(B) Customer may terminate specified Service(s) after the delivery of a Connection Notice upon 30 days' written notice to Level 3. If Customer does so, or if Service is terminated by Level 3 hereunder as the result of Customer's default, Customer shall pay Level 3 a termination charge equal to the sum of: (i) all unpaid amounts for Service actually provided; (ii) 100% of the remaining monthly recurring charges for months 1-12 of the Service Term; (iii) 50% of the remaining monthly recurring charges for month 13 through the end of the Service Term; and (iv) if not recovered by the foregoing, any termination liability payable to third parties resulting from the termination and any out of pocket costs of construction to the extent such construction was undertaken to provide Services hereunder. Customer acknowledges that the charges in this Section are a genuine estimate of Level 3's actual damages and are not a penalty.

ARTICLE 3. DEFAULT

If (A) Customer fails to make any payment when due and such failure continues for 5 business days after written notice from Level 3, or (B) either party fails to observe or perform any other material term of this Agreement and such failure continues for 30 days after written notice from the other party, then the non-defaulting party may: (i) terminate this Agreement and/or any Customer Order, in whole or in part, and/or (ii) subject to Sections 4.1 and 4.3, pursue any remedies it may have at law or in equity.

ARTICLE 4. LIABILITIES AND SERVICE LEVELS

4.1 Damages Limitations. Neither party shall be liable for any damages for lost profits, lost revenues, loss of goodwill, loss of anticipated savings, loss of data or cost of purchasing replacement services, or any indirect, incidental, special, consequential, exemplary or punitive damages arising out of the performance or failure to perform under this Agreement or any Customer Order.

4.2 Disclaimer of Warranties. LEVEL 3 MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT OR ANY APPLICABLE SERVICE SCHEDULE.

4.3 Service Levels. The "Service Level" commitments applicable to Services are contained in the Service Schedules for each Service. If Level 3 does not meet a Service Level, a credit will be issued to Customer as stated in the applicable Service Schedule on Customer's request. Level 3's maintenance log and trouble ticketing systems are used to calculate Service Level events. To request a credit, Customer must contact Level 3 Customer Service (contact information is located at www.level3.com) or deliver a written request (with sufficient detail to identify the affected Service) within 60 days after the end of the month in which the event occurred. Total monthly credits will never exceed the charges for the affected Service for that month. Customer's sole remedies for any non-performance, outages, failures to deliver or defects in Service are contained in the Service Levels applicable to the affected Service.

4.4 Right of Termination for Installation Delay. In lieu of installation Service Level credits, if Level 3's installation of Service is delayed by more than 30 business days beyond the Customer Commit Date, Customer may terminate the affected Service without liability upon written notice to Level 3, provided such written notice is delivered prior to Level 3 delivering a Connection Notice for the affected Service. This Section shall not apply where Level 3 is constructing facilities to a new location not previously served by Level 3.

ARTICLE 5. GENERAL TERMS

5.1 Force Majeure. Neither party shall be liable, nor shall any credit allowance or other remedy be extended, for any failure of performance or equipment due to causes beyond such party's reasonable control ("force majeure event"). In the event Level 3 is unable to deliver Service as a result of a force majeure event, Customer shall not be obligated to pay Level 3 for the affected Service for the duration of the event. Force majeure events and scheduled maintenance under Section 1.4 are considered "Excused Outages."

5.2 Assignment and Resale. Neither party may assign its rights or obligations under this Agreement or any Order without the prior written consent of the other party, which will not be unreasonably withheld. The foregoing notwithstanding, either party may assign its rights and obligations under this Agreement or any Customer Order without the consent of the other party: (1) to any subsidiary, parent or affiliate which controls, is controlled by, or is under common control with that party; (2) pursuant to the sale or transfer of substantially all of the business or relevant assets of that party; or (3) pursuant to any financing, merger, or reorganization of that party. This Agreement shall apply to any permitted transferees or assignees. Unless otherwise provided in a Service Schedule, Customer may provide Service to third parties or use the Services in connection with goods or services provided by Customer to third parties ("Customer Provided Services") provided that Customer shall indemnify, defend and hold Level 3 and its affiliates harmless from any claims arising from or related to any Customer Provided Services. If Customer sells telecommunications services, Customer certifies that it has filed all required documentation and will at all times have the requisite authority with appropriate regulatory agencies respecting the same. Nothing in this Agreement, express or implied, confers upon any third party any right, benefit or remedy under or by reason of this Agreement.

5.3 Affiliates. Service may be provided to Customer by an affiliate of Level 3 and Level 3 may use third parties to provide certain aspects of the Service, but Level 3 shall remain responsible to Customer for the delivery and performance of the Service. Customer's affiliates may purchase Service pursuant to this Agreement, and Customer shall be jointly and severally liable for all claims and liabilities related to Service ordered by any Customer affiliate.

5.4 Notices. Notices shall be in writing and deemed received if delivered personally, sent via facsimile, pre-paid overnight courier, electronic mail (if an e-mail address is provided) or sent by U.S. Postal Service or First Class International Post, addressed as follows:

IF TO LEVEL 3:

Level 3 Communications, LLC
1025 Eldorado Blvd.
Broomfield, Colorado 80021
Attn: General Counsel
Facsimile: (720) 888-5128

IF TO CUSTOMER:

Omnitrans
1700 West Fifth Street
San Bernardino, CA 92411
Attn: Harry Morck
Facsimile:
Email: harry.morck@omnitrans.org

For billing inquiries/disputes, requests for Service
Level credits and/or requests for disconnection of
Service (other than for default):

Level 3 Communications, LLC
1025 Eldorado Blvd.
Broomfield, Colorado 80021
Attn: Director, Billing
Facsimile: (877) 460-9867
E-mail: billing@level3.com

If no Customer address is provided above, notices may be provided to any electronic or physical address identified on the Customer Order. Either party may change its notice address upon notice to the other party. All notices shall be deemed given on (i) the date delivered if delivered personally, by facsimile or e-mail (or the next business day if delivered on a weekend or legal holiday), (ii) the business day after dispatch if sent by overnight courier, or (iii) the third business day after dispatch if otherwise sent.

5.5 Acceptable Use Policy; Data Protection. Customer's use of Service shall comply with Level 3's Acceptable Use Policy and Privacy Policy, as communicated in writing to Customer from time to time and which are also available through Level 3's web site (www.level3.com).

5.6 Intellectual Property and Publicity. Neither party is granted a license or other right (express, implied or otherwise) to use any trademarks, copyrights, service marks, trade names, patents, trade secrets or other form of intellectual property of the other party or its affiliates without the express prior written authorization of the other party. Neither party shall issue any press release or other public statement relating to this Agreement, except as may be required by law or agreed between the parties in writing. The parties agree to keep the terms of this Agreement and all information of a confidential nature obtained in the performance of this Agreement confidential and not disclose such information to third parties, other than to its vendors and affiliates, as well as to treat any information or documentation disclosed between the parties during the performance of this Agreement (including this Agreement) in accordance with the terms and conditions of a non-disclosure agreement to the extent applicable then in effect between the parties.

5.7 Governing Law; Amendment. This Agreement shall be governed and construed in accordance with the laws of the State of California, without regard to its choice of law rules. Each party shall comply with all applicable laws, rules and regulations associated respectively with Level 3's delivery or Customer's use of the Service under the Agreement. This Agreement, including any Service Schedule(s) and Customer Order(s) executed hereunder, constitutes the entire and final agreement and understanding between the parties with respect to the Service and supersedes all prior agreements relating to the Service. This Agreement may only be modified or supplemented by an instrument executed by an authorized representative of each party. No failure by either party to enforce any right(s) hereunder shall constitute a waiver of such right(s).

5.8 Latin American Services. In the event Customer wishes to Order Services to be provided in Latin America, a separate local country addendum/agreement (as approved by local authorities) ("LCA") may be required with the respective Level 3 Affiliate which provides the local Service(s), and such Level 3 Affiliate will invoice the Customer (or its local Affiliate) party to the LCA for the respective local Service(s).

5.9 Relationship and Counterparts. The relationship between the parties is not that of partners, agents, or joint ventures. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one instrument. Digital signatures and electronically exchanged copies of signed documents shall be sufficient to bind the parties to this Agreement.

LEVEL 3 COMMUNICATIONS, LLC ("Level 3")

1025 Eldorado Blvd.
Broomfield, Colorado 80021
Attn: General Counsel

OMNI TRANS ("Customer")

1700 West Fifth Street
San Bernardino, CA 92411 United States
Attn: Christine Van Matre

By _____

Name _____

Title _____

Effective Date: _____

By _____

Name _____

Title _____

Date: _____

SERVICE SCHEDULE
LEVEL 3® INTERNET SERVICES
(Version Issue Date: April 6, 2016)

1. **Applicability.** This Service Schedule is applicable where Customer orders Level 3® Internet Services (which may also be called Dedicated Internet Access, Internet Services, High Speed IP, or IP Transit Services on ordering, invoicing or other documentation). The Service is also subject to the Master Service Agreement executed between Level 3 and Customer, and if none, Level 3's standard Master Service Agreement (the "Agreement"). Level 3 may subcontract the provision of the Service in whole or part, provided that Level 3 remains responsible for the Service to Customer as set forth herein. Capitalized terms used but not defined herein have the definitions given to them in the Agreement.
2. **Service Description.** Level 3® Internet Services are high speed symmetrical Internet services providing access to the Level 3 IP network and the global Internet ("Service"). The Service is generally available via Ethernet connections from 10/100 Mbps ports to 100Gbps ports, as well as T1/E1, DS3/E3, and SONET connections from OC3/STM1 to OC48/STM16. Additional features and functionality may include:
 - a. IP Addresses. IP Address space with proper justification.
 - b. Primary DNS / Secondary DNS. Primary or Secondary DNS as requested.
 - c. Static routing / BGP peering. Static routing or BGP peering options available.
 - d. On-line bandwidth utilization reports. On-line bandwidth utilization reports available through the customer portal.
 - e. Basic security service. Subject to Customer having Level 3-approved routers, included as part of the Services is a one-time per 12 month period ability to request Level 3 to temporarily (i.e. for up to 24 hours): (i) apply a temporary access control list (ACL) with up to 10 rules on such routers; (ii) set up firewall filters specifying IPs, subnets, ports and protocols, and (iii) configure null routes. Requests that exceed this duration or frequency will be charged at \$1000 per hour with a minimum charge of \$4000. Customer is encouraged to order additional Services as outlined below.

The following services may be available at an additional charge to be set forth in an Order and pursuant to the separate Service Schedules for such services:

- a. Level 3 MPLS (IPVPN and VPLS) VPN Service. As part of a Converged Service, Customer may order Level 3 MPLS VPN Service, which provides private site-to-site communications over Level 3's MPLS network.
 - b. Level 3 Enterprise Voice SIP Based Services. As part of a Converged Service or a Converged Voice-Internet Service, Customer may order SIP based enterprise voice for Public Switched Telephone Network connectivity, outbound (1+) access to U.S. (interstate and intrastate) and international locations, inbound (8XX) service, and international toll free calling.
 - c. Managed Router. Managed Router Service provides for Internet access Customer Premises Equipment ("CPE") management by Level 3.
 - d. Site Readiness. Level 3 will extend cabling from the minimum point of entry (MPOE) to CPE suite.
 - e. MSS-Cloud & MSS-Premise. Managed Firewall, Intrusion Prevention, Managed Web Filtering, Antivirus, Antispam, and Log Management are available as a cloud-based service ("MSS-Cloud") or as a managed device on premises service ("MSS-Premises").
 - f. Distributed Denial of Service (DDoS) Mitigation Service. Level 3's DDoS Mitigation Service provides layers of defense through network routing, rate limiting and filtering that can be paired with advanced network-based detection and mitigation scrubbing center solutions.
 - g. Network Protection Service. Network Protection Service (NPS) is additional Internet security which may be provided in conjunction with Internet Services and provides Customer the ability to request basic Distributed Denial of Service (DDoS) mitigation.
 - h. Dynamic Capacity. Dynamic Capacity provides the ability to augment bandwidth on a near real-time basis via self-service tools.
3. **Charges.** Customer shall be billed non-recurring charges ("NRC") and monthly recurring charges ("MRC") for Service as set forth in Order(s). NRC includes applicable installation charges for local-access circuit, port connection and bandwidth. MRC includes local-access charges, port connection charges, and bandwidth charges. Other charges, including but not limited to usage-based charges, may apply as stated in Order(s). The Services are available with fixed-rate or burstable billing types.

Fixed-rate. Service with fixed-rate billing provide a set amount of bandwidth at a fixed-rate MRC. No usage element applies. Customer will not be permitted to exceed the contracted bandwidth level, provided that if Customer also orders Dynamic Capacity (where available) bandwidth and the associated charges may be adjusted as set forth in the separate terms for Dynamic Capacity.

Burstable. For Service provided with burstable bandwidth, the MRC is based on Committed Information Rate ("CIR") (which is also called a Committed Data Rate ("CDR")). The CIR/CDR is the minimum Internet bandwidth that will be billed to Customer each month regardless of lower actual usage. Usage charges for any usage in excess of the CIR/CDR (burstable usage) will apply on a per Mbps basis at the rate stated in the Order. Burstable usage is billed on a 95th percentile basis. Usage levels are sampled every five minutes, for the previous 5 minute period, on both inbound and outbound traffic. At the end of the bill cycle, the highest 5% of the traffic samples for each inbound and outbound, will be discarded, and the higher of the resulting inbound and outbound values will be used to calculate any applicable usage. If available and identified in the applicable Order, a Peak Information Rate (PIR) or Peak Data Rate (PDR) may apply, which is the maximum available bandwidth.

Burstable Services may also be provided on an aggregated basis. For aggregate burstable Service the bandwidth MRC is based on the aggregate Committed Information Rate ("ACIR") (which is also called an aggregate Committed Data Rate ("ACDR")). The ACIR/ACDR is the minimum bandwidth that will be charged to Customer each month, regardless of lower actual usage. Usage charges for any usage in excess of the ACIR/ACDR (burstable usage) will apply on a per Mbps basis at the rate stated in the Order. Burstable usage is calculated on a 95th percentile basis across all included ports. If available and identified in the applicable Order, an aggregated Peak Information Rate (APIR) or aggregated Peak Data Rate (APDR) may apply, which is the maximum available bandwidth across all included ports.

4. **Customer Responsibilities.** Customer is solely responsible for all equipment and other facilities used in connection with the Service which are not provided by Level 3. All IP addresses, if any, assigned to Customer by Level 3 shall revert to Level 3 upon termination of Service, and Customer shall cease using such addresses as of the effective date of termination.
5. **On-Net and Off-net Access.** Access services provided entirely on the Level 3 owned and operated network ("Network") are "On-Net Access Services". Additionally, Level 3 may use third parties to reach Customer's site from the Level 3 Network ("Off-Net Access Services").
6. **Converged Voice-Internet Service.** Where Customer orders Internet Services bundled with Level 3 Enterprise Voice SIP Based Services such charges will show on the invoice as Converged Voice-Internet Service. For clarification, the Converged Voice-Internet Service is treated as a single Service and if Customer wishes to unbundle or terminate a part of the Converged Voice-Internet Service, early termination liability may apply and Customer will be required to execute new orders for the desired stand-alone Service.
7. **Service Levels and Service Credits.** The following service level agreements (SLAs) apply as set forth below. When Converged Voice-Internet Service is ordered the SLAs below apply in lieu of any SLAs identified in the applicable Level 3 Enterprise Voice SIP Based Service Schedule as referenced above in Section 2.
 - a. **Availability Service Level.** Level 3's availability SLA in the United States and Canada is 99.99%. Outside the United States and Canada, the availability SLA is 99.98% for On-Net Access Services and 99.9% for Off-Net Access Service.
 - b. **Network Packet Delivery Service Level.** The packet delivery SLA on the Level 3 Network is 99.95%.
 - c. **Network Latency Service Levels.** The latency SLAs on the Level 3 Network are set forth below and are average round-trip.

Table A: Network Latency

Route	Network Latency Metrics Round-Trip
Intra-North America	< 50 ms*
Intra-Europe	< 35 ms
Intra-Asia	< 110 ms
Intra-Latin America	< 120 ms
North America to Europe	< 80 ms**
North America to Asia	< 185 ms**
North America to Latin America	< 140ms**
Europe to Asia	< 345 ms**
Europe to Latin America	< 210 ms**
Asia to Latin America	< 315 ms**

* Additionally, add 90ms from/to the Mexico IP Hub and add 30ms from/to Hawaii to the west coast of the continental United States.

** Additionally, add the applicable "intra-region" latency parameter for the region in which the applicable Customer Site is located

- d. **Credits for SLAs above:** All SLA credits will be calculated after deducting any discounts and other special pricing arrangements. Credit percentages are applied to the MRC of the CIR/CDR rate, port charge, and local access circuits for applicable sites only. In no event will SLA credits in any calendar month exceed 100% of the total MRCs for Services hereunder for the affected site(s).
 - i. **Availability Service Credit:** Service is "Unavailable" (except in the case of an Excused Outage) if the Customer port at a Customer site is unable to pass traffic. Service Unavailability is calculated from the timestamp Level 3 opens a trouble ticket following the report of a problem by the Customer until the time the ticket is closed. If credits are due under this SLA, no other SLAs apply to the same event. If Service is Unavailable for reasons other than an Excused Outage, Customer will

be entitled to a service credit off of the MRC for the affected Service based on the cumulative Unavailability of the Service in a given calendar month as set forth in the tables below.

Table B: Availability Service Credit - United States and Canada

Cumulative Unavailability (hrs:mins:secs)	Service Level Credit
00:00:01 – 00:05:00	No Credit
00:05:01 – 00:43:00	5%
00:43:01 – 04:00:00	10%
04:00:01 – 8:00:00	20%
08:00:01 – 12:00:00	30%
12:00:01 – 16:00:00	40%
16:00:01 – 24:00:00	50%
24:00:01 or greater	100%

Table C: Availability Service Credit - On-Net Access Services outside the U.S. and Canada

Cumulative Unavailability (hrs:mins:secs)	Service Level Credit
00:00:01 – 00:10:00	No Credit
00:10:01 – 00:43:00	5%
00:43:01 – 04:00:00	10%
04:00:01 – 8:00:00	20%
08:00:01 – 12:00:00	30%
12:00:01 – 16:00:00	40%
16:00:01 – 24:00:00	50%
24:00:01 or greater	100%

Table D: Availability Service Credit- Off-Net Access Services outside the U.S. and Canada

Cumulative Unavailability (hrs:mins:secs)	Service Level Credit
00:00:01 – 00:43:00	No Credit
00:43:01 – 04:00:00	10%
04:00:01 – 8:00:00	20%
08:00:01 – 12:00:00	30%
12:00:01 – 16:00:00	40%
16:00:01 – 24:00:00	50%
24:00:01 or greater	100%

- ii. Network Packet Delivery Service Credits. Packet Delivery SLAs are based on monthly average performance between Level 3 designated points of presence (“POPs”). Customer will be entitled to a service credit off of the MRC for the affected Service as set forth below for the Service parameter(s) not met for reasons other than an Excused Outage. Customer will not be entitled to credits under the packet delivery SLA for the affected Service where such failure is related to Unavailability under the Availability SLA.

Table E: Packet Delivery Service Credit

Packet Delivery Metrics	Percentage Credit
99.95% or greater	No Credit
99.94% - 99.0%	10%
98.99% - 96.0%	30%
95.99% or less	50%

- iii. Network Latency Service Credits. Network latency SLAs are based on monthly average performance between Level 3 designated points of presence (“POPs”). Customer will be entitled to a service credit off of the MRC for the affected Service as set forth below for the Service parameter(s) not met for reasons other than an Excused Outage. Customer will not be entitled to credits under the network latency SLA for the affected Service where such failure is related to Unavailability under the Availability SLA.

Table F: Network Latency Service Credit

Delay Exceeding Network Latency Metrics	Percentage Credit
1- 10 ms	10%
11- 25 ms	30%
26 ms or greater	50%

- e. **Chronic Outage.** As its sole remedy, Customer may elect to terminate an affected Service, or if applicable an affected Converged Voice-Internet Service, hereunder prior to the end of the Service Term without termination liability if, for reasons other than an Excused Outage, such Service becomes Unavailable (as defined in Section 6(d)(i) above) twice during a 30-day period, and becomes Unavailable a third time within 30 days following the second event. Customer may only terminate such Service that is Unavailable as described above, and must exercise its right to terminate the affected Service under this Section, in writing, within 30 days after the event giving rise to the termination right. For clarification, termination of a Converged Voice-Internet Service will result in termination of all applicable Services bundled together as the Converged Voice-Internet Service under the Order.
- f. **Installation Service Level.** Level 3 will exercise commercially reasonable efforts to install any Service on or before the Customer Commit Date for the particular Service. This installation SLA shall not apply to Orders that contain incorrect information supplied by Customer or Orders that are altered at Customer's request after submission and acceptance by Level 3. In the event Level 3 does not meet this installation SLA for reasons other than an Excused Outage, Customer will be entitled to a service credit for each day of delay equal to the charges for 1 day of the pro rata share of the MRC associated with the affected Service up to a monthly maximum credit of 10 days. For Services billed on an Aggregate CIR/CDR basis, the charges for 1 day of the pro rata share of the MRC will be calculated based on the average MRC per port for the aggregate.
8. **Resale Restriction.** Notwithstanding anything to the contrary in the Agreement, Customer is prohibited from reselling any Internet Service or any ports provided hereunder as a stand-alone service to a third party without the express written consent of Level 3, provided, however that Customer may bundle any Internet Service or any ports provided pursuant to this Service Schedule with any other Level 3 services (to the extent resale of those service is allowed) or the services of Customer and resell such bundled service to Customer's subscribers and its customers. The Parties agree that the preceding is not applicable to Converged Voice-Internet Service, and Customer is prohibited from reselling any Converged Voice-Internet Service unless the parties enter into an amendment signed by authorized representatives of both parties.
9. **Latin American Services.** With respect to Services provided in Latin America, Customer agrees that it (or its local Affiliate) will enter into a separate local country addendum/agreement (as approved by local authorities) ("LCA") with the respective Level 3 Affiliate which provides the local Service(s), containing terms necessary to comply with local laws/regulations, and such Level 3 Affiliate will invoice the Customer (or its local Affiliate) party to the LCA for the respective local Service(s).
10. **Level 3 Arranged Third Party Procured Internet Services.** For certain Service locations (including but not limited to where Level 3 may lack relevant licenses to provide such service), Level 3 may agree to arrange Internet services using third party providers ("Third Party Internet Service"). Service options vary on a country by country basis and may include access to the Internet via overbooked and/or non-overbooked connections, DSL technology, private leased circuits (fixed or wireless) and/or Satellite. Specific service details (access type, e.g. downstream/upstream speed, customer premises equipment requirements and number of IP addresses) also differ on a country by country basis. Customer understands and acknowledges that Third Party Internet Service will, if requested by Customer, be provided by third party subcontractor(s) to Level 3 and accordingly, is provided on a best effort and as-is basis. Notwithstanding the foregoing, Customer may report faults and/or outages in Third Party Internet Access to Level 3 on a 24x7 basis and in such circumstances Level 3 will contact the applicable third party service provider with a view to restoring service as quickly as possible. Customer will reasonably cooperate with the requests of such providers of Third Party Internet Service to enable installation, maintenance, repair and disconnection of Services.

ITS16-93 PRICING

The Consultant shall furnish all direct and indirect costs in accordance with the Scope of Work.

Task Description	Unit of Measure	Unit Cost	Quantity	Extended Cost
3 Years				
Installation Fee	LOT	\$0	1	\$0
Monthly Fee for 100 mbps	MONTH	\$1739	36	\$62,604 + \$0.1602 per Mbps per hour; maximum of 72hrs/month
Maintenance/Service	MONTH	\$0	36	\$0
Option: Monthly Fee for 101 mbps – 500 mbps	MONTH	\$2,099.50	36	\$75,589 + \$0.1602 per Mbps per hour; maximum of 72hrs/month
Option: Monthly Fee for 501 mbps – 1024 mbps	MONTH	\$2662	36	\$95,832 + \$0.1602 per Mbps per hour; maximum of 72hrs/month

ITEM # F3

DATE: July 6, 2016

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

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE AWARD – CONTRACT MKP16-37
RUBEN CAMPOS PARK BUS STOP IMPROVEMENTS**

FORM MOTION

Authorize the CEO/General Manager to award Contract MKP16-37 to Hillcrest Contracting, Inc., of Corona, CA, for the provision of Ruben Campos Park Bus Stop Improvements in the amount of \$226,309.10, plus a ten percent contingency of \$22,631, for a total not-to-exceed amount of \$248,940.10.

BACKGROUND

On May 4, 2016, Omnitrans' Board of Directors authorized the release of Invitation for Bids IFB-MKP16-37 for construction of a bus turnout, reconstruction of the outside lane, and the widening and extension of sidewalk at the Nunez/Ruben Campos Park on Fifth Street directly across the street from Omnitrans' East Valley location.

Notices were published in two local newspapers of general circulation and posted on Omnitrans' online bidding system. Four bids were received by the June 6, 2016, deadline and all bids were found to be responsive.

Bids are listed below from highest to lowest:

Company	Total
BWW & Company	\$278,804.21
Lake Arrowhead Construction, Inc. dba Trinity Construction	\$258,681.85
Unique Performance Construction, Inc.	\$247,512.00
Hillcrest Contracting, Inc.	\$226,309.10

Award is recommended to the lowest responsive and responsible bidder, Hillcrest Contracting, Inc., in the amount \$226,309.10. When the cost of overhead and profit, bonds, insurance and permits is added to the base Independent Cost Estimate (ICE) of \$190,400, the total cost estimate is \$233,700. The lowest bid is within the competitive range and therefore deemed fair and reasonable.

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

FUNDING SOURCES

Funding for this contract will be determined from the following sources:

FUNDING	YEAR	PROJECT NAME	INTERNAL ORDER	AMOUNT
State Prop1B	2008	Ruben Campos Park Bus Stop Improvements	C081B102P	\$180,960
LTF	2016	Ruben Campos Park Bus Stop Improvements	C081B102L	\$67,981
Total				\$248,941

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

Short Range Transit Plan/Strategic Initiative Supported – This project helps to fulfill a goal in the OmniConnects Short Range Transit Plan to “deliver safe, reliable, clean, frequent, convenient, comfortable and equitable service.”

CONCLUSION

By approving award of this contract, Omnitrans will be able to make the necessary improvements to the bus stop at Ruben Campos Park.

PSG:JMS:CVM



**ITEM #F3
AUTHORIZE AWARD
CONTRACT MKP-16-37
RUBEN CAMPOS PARK BUS STOP IMPROVEMENTS**

**THE FOLLOWING CONTRACT DOCUMENTS ARE
AVAILABLE UPON REQUEST:**

**SCOPE OF WORK
GENERAL PROVISIONS
SPECIAL PROVISIONS
PREVAILING WAGE**

JULY 6, 2016



CONTRACT AGREEMENT

between

Hillcrest Contracting, Inc.
PO Box 1898
Corona, CA 92878

(hereinafter "CONTRACTOR")
Telephone: 951-273-9600 x101
Email: jerry@hillcrestcontracting.com

And

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

CONTRACT DOCUMENTS

CONTRACT NO. MKP16-37

Ruben Campos Park Bus Stop
Improvements

Contract Amount: \$226,309.10

Omnitrans Project Manager:

Name: Anna Jaiswal
Title: Development Planning Mgr.
Telephone: (909) 379-7256
Email: anna.jaiswal@omnitrans.org

Contract Administrator:

Name: Christine Van Matre
Title: Contract Administrator
Telephone: (909) 379-7122
Email: christine.vanmatere@omnitrans.org



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ATTACHMENT A – SCOPE OF WORK

ATTACHMENT B – REGULATORY REQUIREMENTS

ATTACHMENT D – GENERAL PROVISIONS

ATTACHMENT G – PREVAILING WAGES

ATTACHMENT H – SPECIAL PROVISIONS

This Agreement is made and entered into as of this ____ day of _____, by and between Omnitrans (hereinafter referred to as "OMNITRANS") and Hillcrest Contracting, Inc. (hereinafter referred to as "CONTRACTOR").

RECITALS

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

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

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

1. SCOPE OF WORK

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

2. PERIOD OF PERFORMANCE

The term of this Agreement shall be from the date of execution of this Agreement and continue in effect through _____, unless terminated as specified in Section 10 and 11 of this Agreement. Omnitrans has no obligation to purchase any specified amount of products/services. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

Omnitrans' election to extend the Agreement beyond the Initial Term shall not diminish its right to terminate the Agreement for Omnitrans' convenience or CONTRACTORS default as provided elsewhere in this Agreement.

3. CONTRACT OPTIONS

- A. Omnitrans will have the unilateral right in the contract by which, for a specified time, Omnitrans may elect to purchase additional services called for by the contract, or may elect to extend the term of the contract. The requirements below apply:
- 1) Any options that were requested by Omnitrans and/or contained in the Contractor's PROPOSAL or offer must have been evaluated in making the contract award prior to exercising any such options.
 - 2) Since Contractor's proposed pricing for the option years and additional services are considered in evaluating the Contractor's original proposal and form the basis for awarding the contract, Contractor shall be bound by the proposal pricing for additional services and/or option years, unless otherwise provided herein.
- B. Omnitrans will provide a minimum of thirty days (30) written notice to the Contractor of Omnitrans' exercise of its option to extend the contract years. Omnitrans may give notice of its exercise of the option for additional services at any time during the term of the contract. The minimum time for the written notice may be waived by mutual agreement.

4. COMPENSATION

For CONTRACTOR's full and complete performance of its obligations under this Agreement, OMNITRANS shall pay CONTRACTOR on a LUMP SUM basis and subject to the maximum cumulative payment obligation.

LUMP SUM.....\$226,309.10

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Two Hundred Twenty-Six Thousand Three Hundred Nine Dollars and ten cents (\$226,309.10), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

5. INVOICING AND PAYMENT

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

CONTRACTOR shall submit invoices in duplicate to:

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

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

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

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

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

C. TITLE

- 1) Title shall pass to Omnitrans at the time of payment.
- 2) The title transferred as above shall in each case be good, and free and clear from any and all security interests, liens, and/or other encumbrances.
- 3) The transfer of title as specified above shall not imply Acceptance by Omnitrans, nor relieve the Contractor from the responsibility for strict compliance with the Contract, including warranty as specified in the Article entitled Warranty of Work, and for any loss of or damage to the Work.
- 4) The Contractor at its own expense shall promptly execute, acknowledge, and deliver to the Omnitrans proper bills of sale or other written instruments of title in a form as required by Omnitrans; said instruments shall convey to the Omnitrans' title free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances.
- 5) Contractor shall have title to and bear the risk of any loss of or damage to Work purchased hereunder until they are delivered, unloaded, and received by Omnitrans at the FOB Destination specified herein. Contractor's responsibility for loss or damage except for loss or damage resulting from Contractor's negligence, shall cease when title passes to Omnitrans.

6. AUDIT AND INSPECTION OF RECORDS

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

7. NOTIFICATION

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

To OMNITRANS:

Omnitrans
1700 West Fifth Street
San Bernardino, CA 92411
Attn: Christine Van Matre, Contract
Administrator
909-379-7122
christine.vanmatre@omnitrans.org

To CONTRACTOR:

Hillcrest Contracting, Inc.
PO Box 1898
Corona, CA 92878
Attn: Jerry Blair, Project Manager
951-273-9600 x101
jerry@hillcrestcontracting.com

8. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES

A. OMNITRANS' Project Manager

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

Project Manager: Anna Jaiswal, Development Planning Manager.

- a. Except as expressly specified in this Agreement, the Contracting Officer may exercise any powers, rights and/or privileges that have been lawfully delegated by OMNITRANS. Nothing in this Agreement should be construed to bind OMNITRANS for acts of its officers, employees, and/or agents that exceed the delegation of authority specified herein.
- b. The Contracting Officer has delegated to the Project Manager certain powers and duties in connection with this Agreement. The Project Manager is the authorized representative of the Contracting Officer for matters related to this Agreement. The Project Manager or his/her designee is empowered to:

1. Have general oversight of the Work and this Agreement, including the power to enforce compliance with this Agreement.
 2. Reserve the right to remove any portion of the Work from CONTRACTOR which have not been performed to OMNITRANS' satisfaction.
 3. Subject to the review and acceptance by OMNITRANS, negotiate with CONTRACTOR all adjustments pertaining to this Agreement for revision.
- c. In addition to the foregoing, the Project Manager shall have those rights and powers expressly set forth in other sections of this Agreement.

B. Contractor's Key Personnel

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

<u>Name</u>	<u>Role</u>
Darcy Searle	Project Manager
Al Zamaro	Superintendent
Marcello Landin	Foreman

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

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

9. DISPUTE RESOLUTION

Any disputes between the successful CONTRACTOR and OMNITRANS relating to the implementation or administration of the Contract shall be resolved in accordance with this section.

- A. The parties shall first attempt to resolve the dispute informally in meetings or communications between proposer and OMNITRANS.

- B. If the dispute remains unresolved fifteen (15) days after it first arises, proposer may request that Omnitrans' CEO/General Manager issue a recommended decision on the matter in dispute. Omnitrans' CEO/General Manager shall issue the recommended decision in writing and provide a copy to proposer.
- C. If the dispute remains unresolved after review by Omnitrans' CEO/General Manager, either party may seek judicial resolution of the dispute in an appropriate Court of the State of California.
- D. Pending final resolution of a dispute under this section, proposer shall proceed diligently with performance in accordance with the Contract and Omnitrans' CEO/General Manager's recommended decision.

10. TERMINATION FOR CONVENIENCE

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

11. TERMINATION FOR BREACH OF AGREEMENT

- A. If CONTRACTOR fails to perform any of the provisions of this Agreement or so fails to make progress as to endanger timely performance of this Agreement, OMNITRANS may give CONTRACTOR written notice of such default. If CONTRACTOR does not cure such default or provide a plan to cure such default which is acceptable to OMNITRANS within the time permitted by OMNITRANS, then OMNITRANS may terminate this Agreement due to CONTRACTOR's breach of this Agreement.
- B. If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then OMNITRANS may immediately terminate this Agreement.
- C. If CONTRACTOR violates Section 28, Compliance with Lobbying Policies, of this Agreement, then OMNITRANS may immediately terminate this Agreement.
- D. In the event OMNITRANS terminates this Agreement as provided in this Section, OMNITRANS may procure, upon such terms and in such manner

as OMNITRANS may deem appropriate, Work similar in scope and level of effort to those so terminated, and CONTRACTOR shall be liable to OMNITRANS for all of its costs and damages, including, but not limited, any excess costs for such Work.

- E. All finished or unfinished documents and materials produced or procured under this Agreement shall become OMNITRANS' property upon date of such termination.
- F. If, after notice of termination of this Agreement under the provisions of this Section, it is determined for any reason that CONTRACTOR was not in default under the provisions of this Section, or that the default was excusable under the terms of this Agreement, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 10, Termination for Convenience.
- G. The rights and remedies of OMNITRANS provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

12. ASSIGNMENT

This Agreement, any interest herein or claim hereunder, may not be assigned by CONTRACTOR either voluntarily or by operation of law, nor may all or any part of this Agreement be subcontracted by CONTRACTOR, without the prior written consent of OMNITRANS. Consent by OMNITRANS shall not be deemed to relieve CONTRACTOR of its obligations to comply fully with all terms and conditions of this Agreement.

13. SUBCONTRACTING

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

Subcontractor's Name and Address	Work to Be Performed
V&E Tree Service PO Box 3280 Orange CA 92865	Sod and tree removal
Buena Vista Landscape 1472 Harding St. Orange, CA 92867	Landscape and irrigation

14. INDEPENDENT CONTRACTOR

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

15. INSURANCE

A. INSURANCE REQUIREMENTS

1) General Requirements for Contractor

- a. Without limiting or diminishing the Contractor's obligation to indemnify or hold Omnitrans harmless, Contractor shall procure, prior to commencement of the services required under this contract and maintain for the duration of the contract at its own expense, insurance of the kinds and in the amounts as indicated below;
- b. Provide Omnitrans with valid original certificates of insurance and endorsements showing Omnitrans as an additional insured.

2) Deductibles or Self-Insured Retention (SIR)

SIR must be declared to and approved by Omnitrans. At the option of Omnitrans, either: the insurer shall reduce or eliminate such deductibles or SIR or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

3) Other Insurance Provisions

a. Commercial General Liability and Automobile Liability

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury covering claims which may arise from or out of Contractor's performance of its obligations hereunder and if Contractor's vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then Contractor shall maintain liability insurance for all owned, non-owned or hired vehicles so used. Policy shall name Omnitrans, its officers, officials, employees, agents and volunteers as additional insured as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage

shall contain no special limitations of the scope of protection afforded Omnitrans, its officers, officials, employees, agents, and volunteers.

1. For any claims related to this project, Contractor's insurance coverage shall be primary insurance as respects Omnitrans, its officers, officials, employees, agents, and volunteers. Any insurance and/or deductibles and/or self-insured retentions or self-insured programs maintained by Omnitrans, its officers, officials, employees, agents, and volunteers shall be excess of Contractor's insurance and shall not be construed as contributory.
2. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to Omnitrans.

b. Workers' Compensation

If the Contractor has employees as defined by the State of California, the Contractor shall maintain statutory Workers' compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of Omnitrans and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

c. Care, Custody, and Control

Contractor shall insure any Omnitrans property while under its Care, Custody, and Control according to the requirements listed in the insurance coverage required.

4) Acceptability of Insurers

Insurance companies shall be State of California admitted or approved and have a current **A.M. Best's** rating of no less than **A:VIII**.

5) Verification of Coverage

- a. Contractor shall furnish Omnitrans with original endorsements affecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All insurance certificates and endorsements

are to be received and approved by Omnitrans before work commences.

- b. As an alternative, Contractor's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.
- c. In lieu of purchasing insurance and providing original endorsements and or certificates of insurance, the Contractor may provide proof of self-insurance; such proof must be to the satisfaction of Omnitrans.

6) Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

7) Notification of Terminated Insurance

Insurance shall not be terminated or expire without thirty (30) days written notice, and are required to be maintained in force until completion of the contract.

B. MINIMUM INSURANCE COVERAGE

- 1) ☒ **Commercial General Liability including Products/Completed Operations:** \$1,000,000; per occurrence for bodily and property damage liability and \$2,000,000 aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- 2) ☒ **Automobile Liability:** \$1,000,000; per occurrence for bodily and property damage liability and aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- 3) ☐ **Errors and Omissions Liability:** \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$3,000,000 aggregate or,
- 4) ☐ **Professional Liability:** \$1,000,000; per occurrence and aggregate.
- 5) ☒ **Workers' Compensation:** statutory limits or,
- 6) ☐ **Self Insurance Program:** a State Approved program in an amount and form that meets all applicable requirements of the Labor Code of the State of California.
- 7) ☒ **Employer's Liability:** \$1,000,000; per occurrence.
- 8) ☐ **Environmental Liability:** \$1,000,000; per occurrence and aggregate; *Omnitrans named and endorsed as an Additional Insured.*

- 9) ☐ **Umbrella Policy:** \$4,000,000; per occurrence and aggregate Additional coverage for the above policies, *Omnitrans Additional Insured*.
- 10) ☐ All drivers making deliveries of products specified on this solicitation shall have Hazardous Materials Endorsements on their Commercial Drivers License, and such other Endorsements as may be required by relevant laws and/or regulations.

16. INDEMNITY

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

17. REVISIONS IN SCOPE OF WORK

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

18. RIGHTS IN TECHNICAL DATA

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

termination or expiration of this Agreement and/or final payment thereunder.

19. OWNERSHIP OF REPORTS AND DOCUMENTS

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

20. OWNERSHIP RIGHTS

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

21. WORK FOR HIRE

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

22. SUBMITTAL OF CLAIMS BY CONTRACTOR

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

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

23. EQUAL OPPORTUNITY

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

24. STANDARD OF PERFORMANCE

- A. CONTRACTOR shall perform and exercise, and require its subcontractors to perform and exercise due professional care and competence in the performance of the Work in accordance with the requirements of this Agreement. CONTRACTOR shall be responsible for the professional quality, technical accuracy, completeness and coordination of the Work, it being understood that OMNITRANS will be relying upon such professional quality, accuracy, completeness and coordination in utilizing the Work. The foregoing obligations and standards shall constitute the "Standard of Performance" for purposes of this Agreement. The provisions of this paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.
- B. All workers shall have sufficient skill and experience to perform the Work assigned to them. OMNITRANS shall have the right, at its sole discretion,

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

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

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

26. DISQUALIFYING POLITICAL CONTRIBUTIONS

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

27. COMPLIANCE WITH LAW

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

28. COMPLIANCE WITH LOBBYING POLICIES

A. CONTRACTOR agrees that if it is a Lobbyist Employer or if it has retained a Lobbying Firm or Lobbyist, as such terms are defined by OMNITRANS in its Ethics Policy, it shall comply or ensure that its Lobbying Firm and Lobbyist complies with OMNITRANS' Ethics Policy.

- B. If CONTRACTOR (Lobbyist Employer) or its Lobbying Firm or Lobbyist fails to comply, in whole or in part, with OMNITRANS' Ethics Policy, such failure shall be considered a material breach of this Agreement and OMNITRANS shall have the right to immediately terminate or suspend this Agreement.

29. PUBLIC RECORDS ACT

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

30. WAIVER/INVALIDITY

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

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

31. FORCE MAJEURE

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

32. CONFIDENTIALITY

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

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

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

34. GOVERNING LAW

The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the

State of California, and the proper venue of any action brought hereunder is and shall be the County of San Bernardino, California.

35. MODIFICATIONS TO AGREEMENT

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

36. LICENSING, PERMITS AND INSPECTION COSTS

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

37. PRECEDENCE

- A. Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence:
 - 1) Change Orders and Modification after execution of Agreement
 - 2) Agreement including all exhibits, attachments, appendices, Supplements and Addenda reference therein, with later Addenda having priority over earlier Addenda

- 3) Permit and Permit Documents
- 4) Technical Specifications
- 5) Drawings and Plans
- 6) Special Provisions
- 7) General Provisions

B. Change orders, supplemental agreements and approved revisions to plans and specifications will take precedence over documents listed above. Detailed plans shall have precedence over general plans. Unless otherwise specified all work shall be constructed in accordance with the General Provisions, Technical Specifications, Project Plans, and the 2012 edition of the Standard Specifications for Public Works Construction "Green Book" and other standards noted within the IFB.

38. ENTIRE AGREEMENT

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

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

OMNITRANS

HILLCREST CONTRACTING, INC.

P. Scott Graham
CEO/General Manager

Glenn J. Salsbury
President

Date

Date

Federal Tax I.D. No. 33-0084251

DP QS

CM JS

ATTACHMENT B

REGULATORY REQUIREMENTS

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

ITEM #F3	CONTRACT MKP16-37, RUBEN CAMPOS PARK BUS STOP IMPROVEMENTS
ITEM #F4	CONTRACT OPS16-17, AUDIBLE PEDESTRIAN WARNING SYSTEMS

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 2.45%.
- 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

ITEM # F4

DATE: July 6, 2016

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

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE AWARD – CONTRACT OPS16-17
AUDIBLE PEDESTRIAN WARNING SYSTEMS**

FORM MOTION

Authorize the CEO/General Manager to award Contract OPS16-17 to Clever Devices Ltd., of Woodbury NY, for the provision of up to eighty Audible Pedestrian Warning Systems in an amount not to exceed \$188,916.80, including sales tax.

BACKGROUND

On March 2, 2016, Omnitrans' Board of Directors authorized the release of Request for Proposals RFP-OPS16-17 for the provision of audible pedestrian warning systems, including installation. Notices were published in two local newspapers of general circulation and the solicitation was posted on Omnitrans' online bidding system. Four proposals were received by the April 12, 2016 deadline, and three were deemed responsive.

The following firms were evaluated in accordance with the selection criteria included in the RFP and are ranked from highest score to lowest score:

Selection Criteria	Total Points Possible	Clever Devices, Ltd.	New Flyer Industries Canada ULC	JM Fiber Optics, Inc.
Meeting Technical Specifications	30	24.00	28.50	27.00
Quality of Work	25	23.33	22.08	22.42
Experience	20	19.33	19.67	17.27
Technical Total	75	66.67	70.25	66.68
Cost/ Price	25	25.00	6.49	7.42
Grand Total	100	91.67	76.74	74.10

Clever Devices Ltd., scored within the technical range and offered the lowest price. The firm is recognized as an innovator in airport and transit technology, and has excellent references.

Omnitrans entered into negotiations with Clever Devices Ltd., resulting in a discount of \$20,371 off the original proposed pricing. Clever Devices Ltd.'s factory direct pricing is \$85,302 less than Omnitrans' Independent Cost Estimate of \$274,219 and is therefore deemed fair and reasonable.

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

FUNDING SOURCE

The cost is budgeted in Omnitrans' Capital budget as stated below.

FUNDING	GRANT #	YEAR	PROJECT NAME	INTERNAL ORDER	AMOUNT
Prop 1B	Prop 1B	2014	Audible Turn Signals	A1420402B	\$188,916.80

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

Short Range Transit Plan/Strategic Initiative Supported - This procurement supports Omnitrans' Strategic Initiative 2 – New Bus Technology.

CONCLUSION

By proceeding with this award, Omnitrans will improve the safety environment to its riders and pedestrians.

PSG:JMS:CVM



CONTRACT AGREEMENT

between

Clever Devices Ltd.
300 Crossways Park Drive
Woodbury, NY 11797

(hereinafter "CONTRACTOR")
Telephone: 516-740-8107
Email: astanton@cleverdevices.com

And

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

CONTRACT DOCUMENTS

CONTRACT NO. OPS16-17

AUDIBLE PEDESTRIAN WARNING SYSTEMS

Contract Amount: \$188,916.80

Omnitrans Project Manager:

Name: Diane Caldera
Title: Director of Operations
Telephone: (909) 379-7211
Email: diane.caldera@omnitrans.org

Contract Administrator:

Name: Christine Van Matre
Title: Contract Administrator
Telephone: (909) 379-7122
Email: christine.vanmatre@omnitrans.org



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ATTACHMENT A – SCOPE OF WORK

ATTACHMENT B – REGULATORY REQUIREMENTS

ATTACHMENT C – PRICING

ATTACHMENT D – INSURANCE REQUIREMENTS

This Agreement is made and entered into as of this ____ day of _____, 2016 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and Clever Devices Ltd. (hereinafter referred to as "CONTRACTOR").

RECITALS

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

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

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

1. SCOPE OF WORK

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

2. PERIOD OF PERFORMANCE

The term of this Agreement shall be from the date of execution of this Agreement and continue in effect through _____, unless terminated as specified in Section 10 and 11 of this Agreement. Omnitrans has no obligation to purchase any specified amount of products/services. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

Omnitrans' election to extend the Agreement beyond the Initial Term shall not diminish its right to terminate the Agreement for Omnitrans' convenience or CONTRACTORS default as provided elsewhere in this Agreement.

3. CONTRACT OPTIONS

- A. Omnitrans will have the unilateral right in the contract by which, for a specified time, Omnitrans may elect to purchase additional services called for by the contract, or may elect to extend the term of the contract. The requirements below apply:
- 1) Any options that were requested by Omnitrans and/or contained in the Contractor's PROPOSAL or offer must have been evaluated in making the contract award prior to exercising any such options.
 - 2) Since Contractor's proposed pricing for the option years and additional services are considered in evaluating the Contractor's original proposal and form the basis for awarding the contract, Contractor shall be bound by the proposal pricing for additional services and/or option years, unless otherwise provided herein.
- B. Omnitrans will provide a minimum of thirty days (30) written notice to the Contractor of Omnitrans' exercise of its option to extend the contract years. Omnitrans may give notice of its exercise of the option for additional services at any time during the term of the contract. The minimum time for the written notice may be waived by mutual agreement.

4. COMPENSATION

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

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed One Hundred Eighty-Eight Thousand Nine Hundred Sixteen and Dollars eighty cents (\$188,916.80), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

5. INVOICING AND PAYMENT

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

CONTRACTOR shall submit invoices in duplicate to:

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

Accountspayable@omnitrans.org

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

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

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

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

- C. TITLE

a. Title shall pass to Omnitrans at the time of payment.

b. The title transferred as above shall in each case be good, and free and clear from any and all security interests, liens, and/or other encumbrances.

c. The transfer of title as specified above shall not imply Acceptance by Omnitrans, nor relieve the Contractor from the responsibility for strict compliance with the Contract, including warranty as specified in the Article entitled Warranty of Work, and for any loss of or damage to the Work.

d. The Contractor at its own expense shall promptly execute, acknowledge, and deliver to the Omnitrans proper bills of sale or other written instruments of title in a form as required by Omnitrans; said

instruments shall convey to the Omnitrans' title free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances.

e. Contractor shall have title to and bear the risk of any loss of or damage to Work purchased hereunder until they are delivered, unloaded, and received by Omnitrans at the FOB Destination specified herein. Contractor's responsibility for loss or damage except for loss or damage resulting from Contractor's negligence, shall cease when title passes to Omnitrans.

6. AUDIT AND INSPECTION OF RECORDS

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

7. NOTIFICATION

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

To OMNITRANS:

To CONTRACTOR:

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

Clever Devices Ltd.
300 Crossways Park Drive
Woodbury, NY 11797
Attn: Andrew Stanton, COO

8. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES

A. OMNITRANS' Project Manager

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

Project Manager: Diane Caldera, Director of Operations.

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>Jon Nilsen</u>	<u>Program Director</u>
<u>Ross Sinclair</u>	<u>Project Manager</u>
<u>Ray Lum</u>	<u>On-site Installation Lead</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.

9. DISPUTE RESOLUTION

Any disputes between the successful CONTRACTOR and OMNITRANS relating to the implementation or administration of the Contract shall be resolved in accordance with this section.

- A. The parties shall first attempt to resolve the dispute informally in meetings or communications between proposer and OMNITRANS.
- B. If the dispute remains unresolved fifteen (15) days after it first arises, proposer may request that Omnitrans' CEO/General Manager issue a recommended decision on the matter in dispute. Omnitrans' CEO/General Manager shall issue the recommended decision in writing and provide a copy to proposer.
- C. If the dispute remains unresolved after review by Omnitrans' CEO/General Manager, either party may seek judicial resolution of the dispute in an appropriate Court of the State of California.
- D. Pending final resolution of a dispute under this section, proposer shall proceed diligently with performance in accordance with the Contract and Omnitrans' CEO/General Manager's recommended decision.

10. TERMINATION FOR CONVENIENCE

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

11. TERMINATION FOR BREACH OF AGREEMENT

- A. If CONTRACTOR fails to perform any of the provisions of this Agreement or so fails to make progress as to endanger timely performance of this

Agreement, OMNITRANS may give CONTRACTOR written notice of such default. If CONTRACTOR does not cure such default or provide a plan to cure such default which is acceptable to OMNITRANS within the time permitted by OMNITRANS, then OMNITRANS may terminate this Agreement due to CONTRACTOR's breach of this Agreement.

- B. If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then OMNITRANS may immediately terminate this Agreement.
- C. If CONTRACTOR violates Section 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.

12. ASSIGNMENT

This Agreement, any interest herein or claim hereunder, may not be assigned by CONTRACTOR either voluntarily or by operation of law, nor may all or any part of this Agreement be subcontracted by CONTRACTOR, without the prior written consent of OMNITRANS. Consent by OMNITRANS shall not be deemed to relieve CONTRACTOR of its obligations to comply fully with all terms and conditions of this Agreement.

13. SUBCONTRACTING

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

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

14. INDEPENDENT CONTRACTOR

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

15. INSURANCE

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

- A. **Commercial General Liability including Products/Completed Operations:** \$1,000,000 per occurrence for bodily and property damage liability and \$2,000,000 aggregate; *Endorsement naming Omnitrans as Additional Insured.*

- B. **Automobile Liability:** \$1,000,000 combined single limit bodily and property damage liability per accident; *Endorsement naming Omnitrans as Additional Insured.*
- C. **Workers' Compensation:** statutory limits or, a State-Approved program in an amount and form that meets all applicable requirements of the Labor Code of the State of California; *waiver of subrogation that includes Omnitrans.*
- D. **Employers Liability** Applicable to the work being performed, with a limit no less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate;

Additional Insured:

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

16. INDEMNITY

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

17. REVISIONS IN SCOPE OF WORK

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

18. RIGHTS IN TECHNICAL DATA

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

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

19. OWNERSHIP OF REPORTS AND DOCUMENTS

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

20. OWNERSHIP RIGHTS

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

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

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

21. WORK FOR HIRE

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

22. SUBMITTAL OF CLAIMS BY CONTRACTOR

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

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

23. EQUAL OPPORTUNITY

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

24. STANDARD OF PERFORMANCE

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

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

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

26. DISQUALIFYING POLITICAL CONTRIBUTIONS

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

27. COMPLIANCE WITH LAW

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

28. COMPLIANCE WITH LOBBYING POLICIES

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

29. PUBLIC RECORDS ACT

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

stake holder, retaining the material until otherwise ordered by a court. CONTRACTOR, at its sole expense and risk, shall be responsible for prosecuting or defending any action concerning the materials, and shall defend, indemnify and hold OMNITRANS harmless from all costs and expenses, including attorneys' fees, in connection with such action.

30. WAIVER/INVALIDITY

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

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

31. FORCE MAJEURE

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

32. CONFIDENTIALITY

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

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

- A. OMNITRANS shall review and approve in writing all OMNITRANS related copy proposed to be used by CONTRACTOR for advertising or public relations purposes prior to publication. CONTRACTOR shall not allow OMNITRANS related copy to be published in its advertisements and public relations programs prior to receiving such approval. CONTRACTOR shall ensure that all published information is factual and that it does not in any way imply that OMNITRANS endorses CONTRACTOR's firm, service, and/or product.

- B. CONTRACTOR shall refer all inquiries from the news media to OMNITRANS, and shall comply with the procedures of OMNITRANS' Public Affairs staff regarding statements to the media relating to this Agreement or the Work.
- C. If CONTRACTOR receives a complaint from a citizen or the community, CONTRACTOR shall inform OMNITRANS as soon as possible and inform OMNITRANS of any action taken to alleviate the situation.
- D. The provisions of this Article shall survive the termination or expiration of this Agreement.

34. GOVERNING LAW

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

35. MODIFICATIONS TO AGREEMENT

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

36. LICENSING, PERMITS AND INSPECTION COSTS

- A. The FIRM warrants that it has all necessary licenses and permits required by the laws of the United States, State of California, and the County of San Bernardino, the Local Jurisdictions, and all other appropriate governmental agencies, and agrees to maintain these licenses and permits in effect for the duration of the Agreement. Further, FIRM warrants that its employees, agents, and contractors and subcontractors shall conduct themselves in compliance with such laws and licensure requirements including, without limitation, compliance with laws applicable to nondiscrimination, sexual harassment and ethical behavior throughout the duration of this Agreement. FIRM further warrants that it shall not retain or employ an unlicensed subcontractor to perform work on this Project. FIRM shall notify OMNITRANS immediately and in writing of its employees', agents', contractors' or subcontractors' inability to obtain or maintain, irrespective of the pendency of any appeal, any such licenses, permits, approvals, certificates, waivers, exemptions. Such inability shall be cause for termination of this Agreement.

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

37. WARRANTY PROVISION

A. Coverage

All products supplied are warranted to be free from defects for three years beginning on the date of installation or acceptance, except as specified below. The Contractor must submit their written standard limited warranty guarantee(s) for Omnitrans' review.

- 1) The warranty shall start from the date the product has been accepted. Omnitrans' Warranty Coordinator shall show date of installation acceptance or proof of purchase receipt to qualify for warranty coverage.
- 2) Any supplier or manufacturer's standard limited warranty coverage greater than that specified above must also be extended to Omnitrans.

B. Repair Procedures

- 1) The Contractor is responsible for all warranty-related work. To the extent practicable, Omnitrans will allow the Contractor or its designated representative to perform such work.
- 2) At its discretion, Omnitrans may perform such work if it determines it needs to do so based on transit service or other requirements. The Contractor shall reimburse such work.
- 3) The Contractor or its designated representative shall begin work on warranty-related repairs, within forty-eight 48 hours after receiving notification of a defect from Omnitrans. Omnitrans shall as much as possible, accommodate the Contractor's schedule to complete repairs.
- 4) The Contractor shall provide at its own expense, all spare products and tools required for repairs.
- 5) At Omnitrans' option, the Contractor may be required to remove the equipment from Omnitrans' property while repairs are being affected. If the equipment is removed from Omnitrans' property, the Contractor's representative must diligently pursue repair procedures.
- 6) When Omnitrans performs the warranty-related repairs, it shall correct or repair the defect and any related defects utilizing products supplied by the Contractor specifically for this repair. At its discretion, Omnitrans may use

Contractor-specified products available from its own stock if deemed in its best interest.

- 7) Monthly, or at a period to be mutually agreed upon, reports of all repairs covered by this warranty may be submitted by Omnitrans to the Contractor for reimbursement or replacement of products. The Contractor shall provide forms for these reports when required.
- 8) Omnitrans may require the Contractor to supply new products for warranty related repairs being performed by Omnitrans. These products shall be shipped prepaid to Omnitrans from any source selected by the contractor within three (3) working days of receipt of the request for said products.
- 9) Products supplied by the Contractor shall be original equipment manufacturer (OEM) or approved equal.

C. Servicing

The Contractor may be requested to provide field service support for the correction of warranty failures as required by Omnitrans.

D. Claims

All warranty defects and failures will be submitted to the Contractor as an Omnitrans warranty claims. The Contractor shall notify Omnitrans of receipt and/or status of the claim.

- 1) The Contractor must notify Omnitrans in writing the disposition of a warranty claim within 15 days of receipt.
- 2) The Contractor must resolve all open warranty claims within 60 days after receipt. If the warranty claim is not resolved within the stated time frame the Contractor will be informed of Omnitrans' intent to automatically credit Omnitrans' accounts payable for the Contractor with the amount of the open claim.
- 3) The Contractor is required to notify the Omnitrans' Warranty Coordinator on the disposition of products within five (5) days after Omnitrans' request for a Return Material Authorization (RMA).

E. Remedies

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

F. Reimbursement

Contractor is required to reimburse Omnitrans for costs associated with a warranty repair claim or service request.

- 1) The product costs shall be based on the most current supplier contract price or the invoiced price for replacement.
- 2) The labor repair times shall be fair and reasonable and based on current OEM or industry Standard Repair Time (SRT) guidelines or an agreed upon repair time standard.
- 3) The Contractor is required to reimburse Omnitrans at an hourly shop labor rate based on Omnitrans' current labor cost accounting system. Currently this labor rate is \$60.00 per hour based on wages and benefits. This rate is reviewed, and changed if necessary, in February or March of each year and the Contractor will be notified.
- 4) The Contractor shall be assessed the cost of shipping or a 15% handling charge for product returns, whichever is less.

G. Systemic Defects

During the warranty period, when repairs or modifications necessitated by defective design, material, or workmanship occur to an extent in excess of 25% of the product (used for the same function in the same system or subsystem), the Contractor shall promptly furnish all necessary labor and material to complete such repairs and modifications for every product delivered under the contract, according to the terms and conditions outlined, including systems or subsystems in which the product has not yet failed.

H. Administration

- 1) Warranty claims, and other warranty issues shall be administered, coordinated and resolved with the Omnitrans' Warranty Coordinator and a Contractor's assigned representative.
- 2) The Contractor shall be able to electronically communicate on warranty coverage, registrations, claims, service requests and bulletins/alerts, to be under warranty, the Contractor must forward a written failure analysis report and an itemized quote to Omnitrans' Warranty Coordinator and obtain an authorizing purchase order before proceeding with the repair.
- 3) The Contractor is required to reference the Omnitrans warranty purchase order and warranty claim number when shipping warranty replacement products.
- 4) The Contractor is required to properly identify warranty returns or replacement products with a bill of lading.

38. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement and any and all of its Amendments, Appendices, Exhibits and Attachments, (2) provisions of RFP-OPS16-17 and any and all of its Amendments, Appendices, Exhibits and Attachments; and (3) CONTRACTOR's proposal dated April 12, 2016, Clarifications dated May 20, 2016 and June 10, 2016, and its Best & Final Offer dated June 7, 2016.

39. ENTIRE AGREEMENT

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

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

OMNITRANS

CONTRACTOR

P. Scott Graham
CEO/General Manager

Name: Francis J. Ingrassia
Title: President

DATE

12 April 2016
DATE

Federal Tax I.D. No. 11-2908781

DP 
CM 

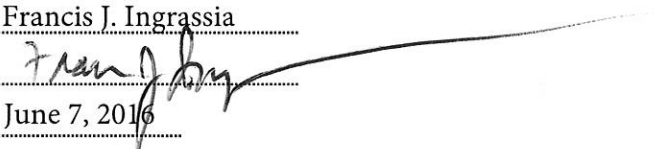
ATTACHMENT C - PRICING

RFP-OPS16-17 Audible Pedestrian Warning System

Best and Final Offer Pricing

Line Totals (Unit Price * Quantity)

Item Num	Description	Unit of Measure	Quantity	Unit Price	Total
1	Audible Pedestrian Warning System	EA	80	\$ 1,807.39	\$ 144,591.20
2	Sales Tax CA 8.25%	EA	80	\$ 149.11	\$ 11,928.80
3	Installation	EA	80	\$ 282.07	\$ 22,565.60
4	2 year Extended Warranty	EA	80	\$ 122.89	\$ 9,831.20
			Total		\$ 188,916.80

PROPOSER's Company Name Clever Devices Ltd.
 (corp./partner/proprietor) Corporation
 Principle Office Address 300 Crossways Park Drive
 City, ST, Zip Woodbury, NY 11797
 Phone Number 516-433-6100
 Fax Number
 E-mail Number tsmith@cleverdevices.com
 Federal Employer I.D. Number 112908781
 Title of Person Authorized to Sign President
 Print Name Authorized to Sign Francis J. Ingrassia
 Authorized Signature 
 Date Signed June 7, 2016

ATTACHMENT D - INSURANCE REQUIREMENTS

OPS16-17 AUDIBLE PEDESTRIAN WARNING SYSTEM

1. INSURANCE REQUIREMENTS

A. General Requirements for Contractor

- 1) Without limiting or diminishing the Contractor's obligation to indemnify or hold Omnitrans harmless, Contractor shall procure, prior to commencement of the services required under this contract and maintain for the duration of the contract at its own expense, insurance of the kinds and in the amounts as indicated below;
- 2) Provide Omnitrans with valid original certificates of insurance and endorsements showing Omnitrans as an additional insured.

B. Deductibles or Self-Insured Retention (SIR)

SIR must be declared to and approved by Omnitrans. At the option of Omnitrans, either: the insurer shall reduce or eliminate such deductibles or SIR or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

C. Other Insurance Provisions

1) *Commercial General Liability and Automobile Liability*

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury covering claims which may arise from or out of Contractor's performance of its obligations hereunder and if Contractor's vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then Contractor shall maintain liability insurance for all owned, non-owned or hired vehicles so used. Policy shall name Omnitrans, its officers, officials, employees, agents and volunteers as insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations of the scope of protection afforded Omnitrans, its officers, officials, employees, agents, and volunteers.

- a) For any claims related to this project, Contractor's insurance coverage shall be primary insurance as respects Omnitrans, its officers, officials, employees, agents, and volunteers. Any insurance and/or deductibles and/or self-insured retentions or self-insured programs maintained by Omnitrans, its officers, officials, employees, agents, and volunteers shall be excess of Contractor's insurance and shall not be construed as contributory.

- b) Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- c) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to Omnitrans.

2) ***Workers' Compensation***

If the Contractor has employees as defined by the State of California, the Contractor shall maintain statutory Workers' compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of Omnitrans and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

3) ***Care, Custody, and Control***

Contractor shall insure any Omnitrans property while under its Care, Custody, and Control according to the requirements listed in the insurance coverage required.

D. Acceptability of Insurers

Insurance companies shall be State of California admitted or approved and have a current **A.M. Best's** rating of no less than **A:VIII**.

E. Verification of Coverage

- 1) Contractor shall furnish Omnitrans with original endorsements affecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All insurance certificates and endorsements are to be received and approved by Omnitrans before work commences.
- 2) As an alternative, Contractor's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.
- 3) In lieu of purchasing insurance and providing original endorsements and or certificates of insurance, the Contractor may provide proof of self-insurance; such proof must be to the satisfaction of Omnitrans.

F. Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

G. Notification of Terminated Insurance

Insurance shall not be terminated or expire without thirty (30) days written notice, and are required to be maintained in force until completion of the contract.

2. MINIMUM INSURANCE COVERAGE

- 1) ☒ **Commercial General Liability including Products/Completed Operations:** \$1,000,000; per occurrence for bodily and property damage liability and \$2,000,000 aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- 2) ☒ **Automobile Liability:** \$1,000,000; per occurrence for bodily and property damage liability and aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- 3) ☐ **Errors and Omissions Liability:** \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$3,000,000 aggregate or,
- 4) ☐ **Professional Liability:** \$1,000,000; per occurrence and aggregate.
- 5) ☒ **Workers' Compensation:** statutory limits or,
- 6) ☐ **Self Insurance Program:** a State Approved program in an amount and form that meets all applicable requirements of the Labor Code of the State of California.
- 7) ☒ **Employer's Liability:** \$1,000,000; per occurrence.
- 8) ☐ **Environmental Liability:** \$1,000,000; per occurrence and aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- 9) ☐ **Umbrella Policy:** \$4,000,000; per occurrence and aggregate Additional coverage for the above policies, *Omnitrans Additional Insured.*
- 10) ☐ All drivers making deliveries of products specified on this solicitation shall have Hazardous Materials Endorsements on their Commercial Drivers License, and such other Endorsements as may be required by relevant laws and/or regulations.

ITEM # F5

DATE: July 6, 2016

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

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Maurice A. Mansion, Treasury Manager

**SUBJECT: AMEND FISCAL YEAR 2017 BUDGET AND
2015-2020 SHORT RANGE TRANSIT PLAN TO TRANSFER FUNDS –
LEGAL SERVICES**

FORM MOTION

Authorize the CEO/General Manager to amend the Fiscal Year 2017 Operating Budget and the 2015 – 2020 Short Range Transit Plan (SRTP) to transfer funding of \$221,545 from Salary and Benefits for In-House Legal Counsel to Professional and Technical Services in the Administration Cost Center (1300).

BACKGROUND

In February 2016, Omnitrans received notification from the County of San Bernardino that the County would no longer be able to provide legal services for Omnitrans after June 30, 2016. As a result of receiving this notification, a new position of In-House Legal Counsel was included in the Fiscal Year 2017 budget that was approved by the Board of Directors on May 4, 2016.

As Omnitrans is taking on the additional responsibility of maintaining and operating the Redlands Passenger Rail Project, more specialized legal services will be required. Upon further consideration, Omnitrans would like to solicit for an outside firm to provide legal services rather than hire in-house counsel and transfer the funds originally budgeted in Salary and Benefits to Professional and Technical Services. If approved, a Request for Proposals will be developed and presented to the Board of Directors for approval by September 2016.

This matter was reviewed with the Executive Committee Meeting at its June 10, 2016, meeting. The Committee concurred with the change in course and directed that notification be provided to the Board of Directors.

FUNDING SOURCE

The budget for the in-house legal counsel will be transferred from Salary and Benefits to Professional and Technical Services. There is no cost increase to the Fiscal Year 2017 budget.

Department: 1300
Expenditure Code: Salary and Benefits & 503060

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

CONCLUSION

Transferring funds from salary and benefits to professional and technical services will allow for the accurate accounting of legal costs.