



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

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

**A. CALL TO ORDER**

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

**B. ANNOUNCEMENTS/PRESENTATIONS**

1. Next Board Meeting: Wednesday, April 9, 2014, at 8:00 a.m. – **NOTE DATE CHANGE**  
Omnitrans Metro Facility Board Room
2. Presentation: One and Two Million Mile Award Winners

**C. COMMUNICATIONS FROM THE PUBLIC**

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

**D. POSSIBLE CONFLICT OF INTEREST ISSUES**

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

**E. CONSENT CALENDAR**

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

- |   |    |
|---|----|
| 1. Approve Board Minutes – February 5, 2014   | 5  |
| 2. Receive and File Executive Committee Minutes – January 7, 2014                   | 17 |
| 3. Receive and File Administrative and Finance Committee Minutes – January 13, 2014 | 20 |
| 4. Receive and File Agency Management Report – January 2014                         | 23 |



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

<b>E. CONSENT CALENDAR CONTINUED</b>	
5. Receive and File Construction Progress Report No. 25 through January 23, 2014 – sbX E Street Corridor BRT Project	32
6. Receive and File Internal Audit Services Status Update	45
7. Receive and File Omnitrans' Fiscal Year Ended June 30, 2013, Audit Reports	59
8. Authorize Award, Contract PLN13-198, Ruben Campos Park Bus Stop Improvement	62
9. Press Articles and Letters of Interest to the Board	100
10. Action on Consent Calendar	
<b>F. DISCUSSION ITEMS</b>	
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	121
2. Operations Safety & Security Informational Brief – Presentation	127
3. Execute Change Order No. 4, Contract OPS10-1, Onboard Video Surveillance System (OBVSS)	134
4. Authorize Award, Contract MNT14-81, Compressed Natural Gas (CNG) Fuel Cylinder Replacement	142
5. Authorize Award (Bench), Contract MNT14-133 (A-B), Batteries	198
6. Execute Amendment No. 3, Contract OPS10-20, West Valley Paratransit Fuel Services	248
7. Authorize Release, Invitation for Bids IFB-MNT14-69, Bus Parts Rebuild Services	252
8. Authorize Release, Invitation for Bids IFB-MNT14-128, Bus Window Replacement	254
9. Authorize Release, Invitation for Bids IFB-OPS14-178, Diesel and Unleaded Fuels	256
10. Approve CEO/General Manager Employment Agreement	258
<b>G. PUBLIC HEARINGS</b>	
There is no Public Hearing scheduled.	
<b>H. BOARD BUSINESS</b>	
<b>Closed Session</b>	
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	
<b>I. REMARKS AND ANNOUNCEMENTS</b>	
<b>J. ADJOURNMENT</b>	

ITEM #     D1    

**DATE:** March 5, 2014

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

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

**FROM:** Jennifer M. Sims, Director of Procurement

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

**FORM MOTION**

Staff hereby provides a listing of principals and subcontractors associated with action items on the agenda for the Board of Director's Meeting scheduled March 5, 2014.

Item	Contract	Principals & Agents	Subcontractors
E8	Authorize Award Contract PLN13-198 Ruben Campos Park Bus Stop Improvement	<i>David Evans and Associates, Inc. 4200 Concourses, Ste 200 Ontario, CA Rob Bathke, PE, QSD</i>	<i>Converse Consultants 10391 Corporate Drive Redlands, CA</i>
F3	Execute Change Order No. 4 Contract OPS10-1 Onboard Video Surveillance System (OBVSS)	<i>SDI, (System Development Integration LLC) Chicago, IL James R. Boyle, EVP/CEO</i>	<i>TransIT Zelienople, PA  Verint Melville, NY</i>
F4	Authorize Award Contract MNT14-81 Compressed Natural Gas (CNG) Fuel Cylinder Replacement	<i>Complete Coach Works, Inc. Riverside, CA Dale Carson Owner/President</i>	<i>N/A</i>
F5	Authorize Award (Bench) Contract MNT14-133(A-B) Batteries	<i>H&amp;H Auto Parts Wholesale Arleta, CA Jim Holmquist, President  Battery Systems, Inc. Fontana, CA Mikel Sides, Contract Sales Manager</i>	<i>N/A</i>
F6	Execute Amendment No. 3 Contract OPS10-20 West Valley Paratransit Fuel Services	<i>Poma Automated Fueling, Inc. Bloomington, CA Randal Malchow, President</i>	<i>N/A</i>

PSG/JS

## CONFLICT OF INTEREST FORM

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

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

### BOARD MEMBER INFORMATION

BOARD MEMBER NAME	CITY/COUNTY NAME	MEETING DATE

### CAMPAIGN CONTRIBUTIONS

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

### FINANCIAL INTEREST

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

<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Board Member Signature	<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Date
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ITEM #           E1          

**BOARD OF DIRECTORS' MEETING  
MINUTES OF FEBRUARY 5, 2014**

**A. CALL TO ORDER**

Chair Alan Wapner called the regular meeting of the Omnitrans Board of Directors to order at 8:03 a.m., Wednesday, February 5, 2014, at the Omnitrans Facility located at 1700 West 5th Street, San Bernardino, California.

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

**BOARD MEMBERS PRESENT**

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

**BOARD MEMBERS NOT PRESENT**

Council Member Ron Dailey, City of Loma Linda  
Supervisor Robert Lovingood, County of San Bernardino  
Council Member Ed Palmer, City of Rialto

**OMNITRANS' ADMINISTRATIVE STAFF PRESENT**

Scott Graham, Interim CEO/General Manager

Diane Caldera, Interim Director of Operations  
Jack Dooley, Director of Maintenance  
Marge Ewing, Director of Human Resources  
Sam Gibbs, Director of Internal Audit Services  
Jacob Harms, Director of Information Technology  
Jennifer Sims, Director of Procurement  
Don Walker, Director of Finance  
Wendy Williams, Director of Marketing  
Anna Rahtz, Acting Director of Planning  
Jeremiah Bryant, Service Planning & Scheduling Manager  
Ray Maldonado, Employee Relations Manager  
Maurice Mansion, Treasury Manager  
Eugenia Pinheiro, Contracts Manager  
James Deskus, IPMO Project Analyst  
Andres Ramirez, Construction Manager  
Joanne Cook, Contracts Administrator  
Christine Van Matre, Contracts Administrator  
Mark Crosby, Loss Prevention Supervisor  
Mike Bonacio, Technical Services Manager  
Krystal Turner, Contracts Review Analyst

**OTHER**

Carol Greene, Legal Counsel

**B. ANNOUNCEMENTS/PRESENTATIONS**

Chair Wapner announced the next regular meeting is scheduled Wednesday, March 5, 2014, at 8:00 a.m.

Presentations were given to Employee of the Quarter Lorina Le’Roy and Employee of the Year Benito Zavalza.

**C. COMMUNICATIONS FROM THE PUBLIC**

Chair Wapner requested the letter received from Steve Roger regarding the subject: Welcome to the Friendly Communities Program, as well as his objection to Consent Calendar Item E16, Adopted Proposed Revisions to Personnel Policy #802, Employee Injury and Illness Prevention Program and Personnel Policy #803, Work Place and Transit System Security, be entered into the record. This letter is included as part the meeting minutes. (Note: Revised letter, with revision made to last paragraph on Page 3 of letter, submitted on February 7, 2014 and is attached hereto.)

Comments were received from the following individuals representing themselves, the local community and/or The Center for Community Action and Environmental Justice (CCA EJ): Teresa Flores-Lopez, Ericka Flores, Graciela Larios, Susana Negrete, Rudi Flores, Carlos Avalos, Flor Flores, Jose Velasco, Pedro Patlam, Joanna Chavez, Graciela Regalado, and Mirian Campos, as well as one other unidentified gentleman. All expressed concern and fear

for the safety of the community as a result of Omnitrans' onsite Liquefied Natural Gas (LNG) tanks, and all demanded Omnitrans move the tanks to an industrial location.

Board Chair Wapner thanked the speakers and directed that this matter be reviewed by the Operations and Safety Committee and brought back to the Board for discussion.

#### **D. POSSIBLE CONFLICT OF INTEREST ISSUES**

There were no Conflicts of Interest identified.

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

1. Approve Board Minutes – January 8, 2014
2. Receive and File Executive Committee Minutes – December 6, 2013
3. Receive and File Administrative & Finance Committee Minutes – November 12, 2013
4. Receive and File Plans and Programs Committee Minutes – December 3, 2013
5. Receive and File Agency Management Report – December 2013
6. Receive and File Affirmative Action Status Report as of January 14, 2014
7. Receive and File Construction Progress Report No. 23-24 through December 25, 2013 – sbX E Street Corridor BRT Project
8. Receive and File sbX E Street Corridor BRT Project Quarterly Report – December 2013
9. Receive and File Director of Finance Quarterly Report – Forward Fuel Purchases through January 2014
10. Receive and File Key Performance Indicators – Fiscal Year 2014 2<sup>nd</sup> Quarter Report
11. Receive and File Fiscal Year 2014 Management Plan – 1<sup>st</sup> Semiannual Report
12. Authorize San Bernardino Transit Center Property Exchange to Result in Property Line Adjustment
13. Authorize Award, Contract OPS14-98, Hand Held Radios
14. Authorize Award, Purchase Order MNT14-106, Wireless Mobile Column Lifts
15. Authorize Award, Contract FIN14-158, Credit/Debit Card Processing and Merchant Services
16. Adopt Proposed Revisions to Personnel Policy #802, Employee Injury and Illness Prevention Program, and Personnel Policy #803, Work Place and Transit System Security
17. Adopt Resolution #271-14, Authorization for Execution of Certifications and Assurances for Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) Bond Program
18. Press Articles and Letters of Interest to the Board

Mr. Stephen Rogers addressed the Board concerning the letter he submitted for the record and his objection to the proposed changes specifically to Personnel Policy #803, Work Plan and Transit System Security, Consent Calendar Item #E16, Page 203, Paragraph B.3.

Member Rutherford requested Items #E10 and #E11 pulled for discussion.

M/S/C (Eaton/Graham) that approved Consent Calendar Items 1 through 9 and Items 12 through 18.

Upon conclusion of discussion on Item #E10, on motion by Member Eaton, seconded by Member Spagnolo and carried, Item #E10 was approved. And, upon conclusion of questions and suggestions on Item #E11 for future updates of the Fiscal Year 2014 Management Plan, on motion by Member Spagnolo, seconded by Member Riddell and carried, Item #E11 was approved. At direction of the Board Chair, recommendations for clarification on both Item #E10 and Item #E11 will be incorporated in future reports.

## **F. DISCUSSION ITEMS**

### **1) CEO/General Manager's Report**

Interim CEO/General Manager Graham reviewed the CEO/General Manager's Report, including a presentation of the 80-second sbX safety video.

### **2) Authorize Plans and Programs Committee to Call for OmniConnects Public Hearings**

M/S/C (Yates/Roberts) that authorized the Plans and Programs Committee (PPC) to authorize a call for public hearings to be issued following the Plans and Programs Committee meeting in February 2014.

### **3) Authorize Award, Contract MNT14-01, Industrial Chemicals**

M/S/C (Graham/Yates) that authorized the Interim CEO/General Manager to award Contract MNT14-01 to Enviroform Industries of Santa Fe Springs, CA, for the provision of Industrial Chemicals beginning January 20, 2014 and ending no later than January 19, 2015, in the amount of \$30,811, and the authority to exercise four one-year options, extending the contract to no later than January 19, 2019, in the annual amount of \$36,805 for each option year, for a five-year contract amount of \$178,031 should all options be exercised, plus a ten percent contingency of \$17,803, for a total not-to-exceed amount of \$195,834.

Note: Director of Procurement noted that the actual beginning date of the contract will be changed to February 5, 2014, or the date the contract is executed.

### **4) Authorize Award, Contract SAS14-09, Security Services**

M/S/C (Yates/Musser) that authorized the Interim CEO/General Manager to award Contract SAS14-09 to General Security Service, Inc. of Wilmington, CA, for the provision of Security Patrol Services for the sbX Green Line corridor, stations, and park and rides beginning February 24, 2014, and Security Services for Omnitrans' fixed-route and paratransit operations facilities beginning July 1, 2014, for a two-year base period ending June 30, 2016, in the amount of \$1,620,512, and three single option years ending no later than June 30, 2019, with Option Year One in the amount of \$818,408, Option Year Two in the amount of \$842,995, and Option Year Three in the amount of \$868,900, for a five-year contract total of \$4,150,815, plus a ten percent contingency of \$415,082, for a total not-to-exceed amount of \$4,565,897.

- 5) Authorize Sole Source Purchase, Annual Software Maintenance Services, SAP ERP Software for Business Systems

M/S/C (Stanckiewicz/Roberts) that authorized the Interim CEO/General Manager to issue sole source purchase order to SAP Public Services, Inc., Palo Alto, CA, for the SAP Enterprise Resource Planning (ERP) software maintenance services for the Agency's business systems, beginning January 1, 2014, and ending December 31, 2014, in the amount of \$274,030.10.

- 6) Authorize Award, Contract ITS14-82, Automatic Passenger Counters

M/S/C (Graham/Yates) that authorized the Interim CEO/General Manager to award Contract ITS14-82 to Trapeze Software Group, Inc., of Scottsdale, Arizona, for the provision of Automatic Passenger Counters (APC) for the sbX articulated buses in the amount of \$138,497 for the base contract, plus \$16,300 for the profiling option, and \$14,124 for the option of up to two additional APCs, for a contract not-to-exceed amount of \$168,921, plus a ten percent contingency of \$16,892, and a 3.27% Cost Allocation Plan (CAP) of \$6,076, for a not-to-exceed amount of \$191,889.

- 7) Authorize Release, Request for Proposals RFP-MKT14-120, Advertising and Design Services

M/S/C (Graham/Yates) that authorized the Interim CEO/General Manager to release Request for Proposals RFP-MKT14-120, for the provision of Advertising and Design Services for a three-year base period beginning July 1, 2014 and ending June 30, 2017, with the option to exercise two single option years, for an end date no later than June 30, 2019.

- 8) Authorize Release, Invitation for Bids IFB-MKT14-164, Fare Media Printing

M/S/C (Graham/Yates) that authorized the Interim CEO/General Manager to release Invitation for Bids IFB-MKT14-164, for the provision of Fare Media Printing for a two (2) year base period, and three (3) single option years beginning June 1, 2014, and ending no later than May 31, 2019.

## **G. PUBLIC HEARINGS**

There were no Public Hearings scheduled.

## **H. BOARD BUSINESS**

The Board adjourned to Closed Session at 9:22 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. Consideration of Appointment of CEO/General Manager pursuant to Government Code Section 54956(b)(1)

The Board reconvened to Open Session at 9:31 a.m.

Board Chair Wapner announced that an agreement has been made with the Amalgamated Transit Union Local No. 1704 regarding the selection and compensation for Coach Operators driving the sbX E Street Corridor.

Chair Wapner also announced that, by a unanimous vote, the Board approved the appointment of Scott Graham, as the permanent CEO/General Manager, and that he and the Vice Chair would negotiate the contract terms and bring back the contract to the Board of Directors for approval at the next meeting.

**I. REMARKS AND ANNOUNCEMENTS**

Board Chair Wapner thanked Board Member Morris for his service to Omnitrans and led the Board in a round of applause acknowledging his service. And, with Member Morris' departure, Chair Wapner announced the appointment of Board Member Graham as the new Committee Chair for the Administrative and Finance Committee.

**J. ADJOURNMENT**

The Board adjourned at 9:32 a.m. The next regular meeting is scheduled for March 5, 2014, at 8:00 a.m., with location posted on the Omnitrans website and at Omnitrans' San Bernardino Metro Facility.

Prepared by:

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Vicki Dennett, Assistant to CEO/General Manager



**STEPHEN W. ROGERS, P.E. CONSULTING**

820 CHURCH ST. REDLANDS, CA 92374

PHONE: 909.556.1988 (CELL) EMAIL: STEVE\_ROGERS@VERIZON.NET

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February 4, 2014

OmniTrans Metro Facility  
1700 W. 5<sup>th</sup> Street  
San Bernardino, CA 92411  
Attn: Board of Directors

Subject: Public Comments for 2-5-14 Board of Directors meeting

Honorable Chairman and Board Members:

Under Item C:

**WELCOME TO THE FRIENDLY COMMUNITIES PROGRAM**

We are taking this opportunity to contact you and other representatives of the various business sectors, the private, government and non-governmental organizations, to introduce your entity to the *Friendly Communities* program. With the current depressed economic climate and conditions all across this great nation, the time is right for a group of business leaders with a vision for our recovery and prosperity, to focus on reinventing the paradigm for success in this challenging new international economy and global marketplace. With your support, we will be implementing the initial *Friendly Communities* program projects, designed to promote business and economic development, education, training and healthy employment opportunities in San Bernardino County, and in other strategic locations across Southern California.

A new dynamic has evolved in American business, where the private sector will have to take the leadership role in developing programs to create economic stimulus of the new international business and logistics community, while at the same time, focus on putting our fellow Americans back to work. Public resources and revenues to our counties and cities continue to dwindle, thereby leaving a massive void in the funding stream needed to address critical quality of life issues in our communities. Non-profits, faith-based and service-club organizations, and especially private sector corporations have now been placed in the position of having to assume a significantly greater challenge and responsibility, as far as shaping the form and direction of our recovery and economic rebuilding efforts, and it will take *Friendly Communities* of common interest, working together, in order to make it all a success!

**THUNDERBIRD TRANSPORTATION NETWORK (TTN)  
FRIENDLY COMMUNITIES PROGRAM - TRANSPORTATION NETWORK  
IMPROVEMENT AND LOGISTICS DEVELOPMENT**

The Thunderbird multi-modal transportation network is being developed to focus attention and resources towards the optimization of programs, facilities, equipment, systems and labor assets continent-wide, in promoting transportation corridor redevelopment and efficiency upgrades, through various asset management and improvement projects, involving joint-community cooperative and multi-tribal government-business partnership stakeholders.

San Bernardino City is centrally located in the western transportation and commodity distribution corridor, and is poised for a unique opportunity to provide oversight leadership for corridor improvement, under the ongoing Federal corridor development program, to improve our 50-mile wide band of territory from Sacramento to San Diego.

San Bernardino is uniquely located at the critical crossroads of these north-south, and east-west ancient transportation routes. The infrastructure, labor resources, and professional community resources needed to reach our goals for job creation are already in place. Through a maximization of efficiencies and coordination of efforts, local entities must take advantage of these programs, designed to achieve and surpass the Federal Clean Air standard limits set for YR2020/ 2035, using sustainable communities strategies to meet the regional goals and regulatory requirements established under AB32 and SB375.

We propose an inter-modal resource and distribution business association that will bring into operation a complete logistical service to Southern California, inter-connected through San Bernardino, to include:

- Former-Norton Air Force Base San Bernardino International Airport conversion and redevelopment as goods movement hub.
- Central Maintenance Facilities at major distribution centers, administration and equipment operations terminal services standardization, technical modernization and on-job training.
- TSA corridor security enhancement project implementation, to include DOT equipment safety guideline inspections and on-job training.
- Clean Water Act environmental safety and remediation services and on-job training.

- Clean Air Act heavy equipment retrofits, code enforcement services and on-job training.
- TSA rail car and truck technology retrofits, conversions, maintenance and on-job training.
- Small commercial aircraft maintenance, including AFP services and on-job training.
- NAFTA enhancements to commodity movement through governmental regulatory enforcement technology upgrades and on-job training.
- Grants administration through administrative oversight and successor leadership development.

Under Item E.16 Adopt Proposed Revisions to Personnel Policy #802, Employee Injury and Illness Prevention Program, and Personnel Policy #803, Work Place and Transit System Security

On page 203, I object to the removal of the phrase "...involves a violent act or threat of violence..." for the modification proposed under B.3 involving the Type III risk event definition, and proposing to replace the phrase with the ambiguous language "...consists of an assault..."

If there are any questions about this communication, please contact me at (909) 556-1988.

Thank you for your time, consideration and continuing service to the City of Redlands and surrounding communities of common interest.

Sincerely,

Steve Rogers, VP/ Treasurer Mentone Area Community Assoc. (MACA)  
**Stephen W. Rogers, P.E. Consulting**

C: Gabe Dela Rosa, President, MACA  
 Rudi Flores, CCAEJ



**STEPHEN W. ROGERS, P.E. CONSULTING**

820 CHURCH ST. REDLANDS, CA 92374

PHONE: 909.556.1988 (CELL) EMAIL: STEVE\_ROGERS@VERIZON.NET

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February 4, 2014 (Rev. February 7, 2014)

OmniTrans Metro Facility  
1700 W. 5<sup>th</sup> Street  
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Attn: Board of Directors

Subject: Public Comments for 2-5-14 Board of Directors meeting

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Under Item C:

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A new dynamic has evolved in American business, where the private sector will have to take the leadership role in developing programs to create economic stimulus of the new international business and logistics community, while at the same time, focus on putting our fellow Americans back to work. Public resources and revenues to our counties and cities continue to dwindle, thereby leaving a massive void in the funding stream needed to address critical quality of life issues in our communities. Non-profits, faith-based and service-club organizations, and especially private sector corporations have now been placed in the position of having to assume a significantly greater challenge and responsibility, as far as shaping the form and direction of our recovery and economic rebuilding efforts, and it will take *Friendly Communities* of common interest, working together, in order to make it all a success!

## **THUNDERBIRD TRANSPORTATION NETWORK (TTN) FRIENDLY COMMUNITIES PROGRAM - TRANSPORTATION NETWORK IMPROVEMENT AND LOGISTICS DEVELOPMENT**

The Thunderbird multi-modal transportation network is being developed to focus attention and resources towards the optimization of programs, facilities, equipment, systems and labor assets continent-wide, in promoting transportation corridor redevelopment and efficiency upgrades, through various asset management and improvement projects, involving joint-community cooperative and multi-tribal government-business partnership stakeholders.

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- TSA corridor security enhancement project implementation, to include DOT equipment safety guideline inspections and on-job training.
- Clean Water Act environmental safety and remediation services and on-job training.

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Thank you for your time, consideration and continuing service to the communities of common interest within the County of San Bernardino.

Sincerely,

Steve Rogers, VP/ Treasurer Mentone Area Community Assoc. (MACA)  
**Stephen W. Rogers, P.E. Consulting**

C: Gabe Dela Rosa, President, MACA  
 Rudi Flores, CCAEJ member

ITEM #           E2          

**EXECUTIVE COMMITTEE MEETING  
MINUTES  
JANUARY 7, 2014**

**A. CALL TO ORDER**

The Executive Committee meeting was called to order by Chair Alan Wapner at 9:08 a.m., Tuesday, January 7, 2014.

**COMMITTEE MEMBERS ATTENDING**

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

**OMNITRANS STAFF ATTENDING**

P. Scott Graham, Interim CEO/General Manager  
Marjorie Ewing, Director of Human Resources

**B. ANNOUNCEMENTS/PRESENTATIONS**

1. Next Committee Meeting:     Friday, February 7, 2014, 9:00 a.m.  
  Omnitrans Metro Facility

**C. COMMUNICATIONS FROM THE PUBLIC**

There were no communications from the public.

**D. DISCUSSION ITEMS**

1. Approve Executive Committee Minutes – December 6, 2013

M/S (Lilburn/Morris) to approve Executive Committee Minutes of December 6, 2013.  
Motion was unanimous by members present.

2. Structural Assessment Informational Brief - Presentation

Interim CEO/General Manager introduced Dave Schwartz of Capital Partnerships, who prepared a Structural Assessment of Omnitrans. While this is just an informational brief,

Omnitrans will use the report for further exploration in preparation of the Fiscal Year 2015 budget. The objective of the assessment was to look at the management structure and position function of the Senior Leadership Team and benchmark it with twenty similar size transit agencies throughout the nation, many of which were included in the Comprehensive Operational Analysis, the performance audit, and some were selected from the American Public Transportation Association's reference books. From the initial list of twenty, the list was reduced to thirteen agencies that were outperforming Omnitrans in one or more of the performance indicator categories. Finally, this short list was used to develop the best practices that might be applicable to Omnitrans. Mr. Schwartz emphasized that the assessment focuses on issues, alternatives and scenarios that will be discussed and possibly considered during the upcoming budget process.

The agencies used for the assessment included similar sized agencies that provide bus, bus rapid transit and demand response service, with similar service area population size and service area characteristics. While the emphasis was placed on agencies located in the southwest, agencies from Texas, Florida, Midwest, Northeast and the Pacific Northwest were also included in the assessment.

There were three criteria used in developing the alternatives for consideration: Federal/State regulations, Malcolm Baldrige criteria for performance excellence and the best practices identified in examining the thirteen transit agencies.

Each category in the assessment includes an issue statement and identifies alternatives on how one or more of the 13 agencies handle the function. It is these alternatives that will be looked at further by the Interim CEO/General Manager in developing recommendations for the Board's consideration.

Mr. Schwartz reviewed the various alternatives and scenarios identified in the assessment and responded to questions posed by the Committee Members. He emphasized that because of the flat funding projections for the next several years, while there were alternatives developed that added to the organization structure, direction was provided by the Interim CEO/General Manager to develop alternatives that do not.

Five critical success factors to be considered moving forward:

- 1) Reduce direct reports to CEO/General Manager from ten down to three to five – This would provide for more focus on strategic planning, agency funding and external relationships with stakeholders.
- 2) Resource Sharing – Organizational changes should facilitate the opportunity to offset personnel expenses by providing services to other transit agencies
- 3) Enhance organizational checks and balances
- 4) Develop complementary skill sets to generate symmetry in functional areas
- 5) Proactive approach to succession planning

Board Chair Wapner thanked Mr. Schwartz for the presentation and directed the Interim CEO/General Manager to refine and develop a solid recommendation, with possibly one

option, to bring back to the Executive Committee for review prior to forwarding to the Board of Directors for consideration.

**E. BOARD BUSINESS**

The Committee adjourned to Closed Session at 9:54 a.m.

**Closed Session**

1. Consideration of Appointment of CEO/General Manager pursuant to Government Code Section 54956(b)(1)

The Committee reconvened to Open Session at 10:28 a.m. Board Chair Wapner announced there was no reportable action taken during Closed Session.

**F. ADJOURNMENT**

The Executive Committee adjourned at 10:28 a.m. The next Executive Committee Meeting is scheduled Friday, February 7, 2014, at 9:00 a.m.

Prepared by:

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Vicki Dennett, Assistant to CEO/General Manager

ITEM #           E3          

**ADMINISTRATIVE & FINANCE COMMITTEE  
MINUTES  
JANUARY 13, 2014**

**A. CALL TO ORDER**

The Administrative & Finance Committee meeting was called to order by Committee Chair Pat Morris at 11:01 a.m. on January 13, 2014.

**Committee Members Present**

Mayor Pat Morris, City of San Bernardino – Committee Chair  
Mayor Paul Eaton, City of Montclair  
Council Member Frank Gonzales, City of Colton  
Mayor Ed Graham, City of Chino Hills  
Mayor Ray Musser, City of Upland  
Council Member Dick Riddell, City of Yucaipa  
Mayor Pro Tem John Roberts, City of Fontana  
Mayor Walt Stanckiewicz, City of Grand Terrace  
Mayor Pro Tem Alan Wapner, City of Ontario

**Committee Members Not Present**

Mayor Pro Tem Paul Foster, City of Redlands  
Supervisor Gary Ovitt, County of San Bernardino

**OmniTrans Administrative Staff Present**

Scott Graham, Interim CEO/General Manager  
Diane Caldera, Interim Director of Operations  
Marge Ewing, Director of Human Resources  
Sam Gibbs, Director of Internal Audit Services  
Jacob Harms, Director of IT  
Anna Rahtz, Acting Director of Planning & Development Services  
Don Walker, Director of Finance  
Wendy Williams, Director of Marketing  
Andres Ramirez, sbX Construction Manager  
Jim Deskus, sbX Project Analyst  
Maurice Mansion, Treasury Manager  
Dennice Raygoza, Senior Contract Administrator

**B. ANNOUNCEMENTS/PRESENTATIONS**

The next Committee Meeting is scheduled Monday, February 10, 2014, at 11:00 a.m.

**C. COMMUNICATION FROM THE PUBLIC**

There were no comments from the public.

**D. POSSIBLE CONFLICT OF INTEREST ISSUES**

None

**E. AGENDA ITEMS**

1. Approve Administrative & Finance Committee Minutes of November 12, 2013

M/S (Gonzales/Stanckiewicz) that approved the minutes of the November 12, 2013 Committee meeting. Member Eaton abstained. Motion unanimous by remaining members present.

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

Director of Finance Walker provided the Forward Fuel Purchase Update for January, reporting that 150,000 gallons of Compressed Natural Gas are hedged on the New York Mercantile Stock Exchange through Morgan Stanley. For January, the spot market price closed slightly higher than the hedged price, creating a monthly gain on the hedge position of \$13,225. Through January 2014, there has been a total loss of \$21,620 recognized on settled hedge positions, with an unrecognized gain of \$49,900 for the months of February through June 2014.

This item is to receive and file.

3. Receive & Forward to Board of Directors, Construction Progress Report No. 23-24 through December 25, 2013 – sbX E Street Corridor BRT Project

sbX Construction Manager Ramirez presented a detailed PowerPoint of progress at each station along the sbX Corridor and of the Vehicle Maintenance Facility (VMF). As of December 25, 2013, the VMF was about 30 percent complete, with work progressing on all buildings since that time. And, at December 25, 2013, the sbX corridor was over 90 percent complete with construction in the final stages. Testing is ongoing at all the stations along the corridor. Project remains within the projected budget of \$191.7M, with \$142.2M expended to date, and a \$189.7 estimated cost at completion. Lost time injuries remain at zero with more than 389,000 man hours logged.

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

4. Recommend to Board of Directors, San Bernardino Transit Center Property Exchange to Result in Property Line Adjustments.

Acting Director of Planning Anna Rahtz explained that this request is to approve the exchange of small portions of property between Omnitrans and the San Bernardino Associated Governments (SANBAG) at Rialto and E Street in San Bernardino. Omnitrans needs a small corner of property currently owned by SANBAG for the San Bernardino Transit Center. Similarly, SANBAG needs a small strip of property adjacent to the railroad tracks currently owned Omnitrans for the Downtown San Bernardino Passenger Rail Project. This will be an even exchange, is a benefit to both agencies, and was approved by the Federal Transit Administration.

M/S (Musser/Stanckiewicz) that recommended to the Board of Directors the approval of a proposed property exchange between Omnitrans and SANBAG to effectuate a property line adjustment for the benefit of the San Bernardino Transit Center bus facility and the Downtown San Bernardino Passenger Rail Project (DSBPRP):

1. Deed real property to SANBAG being a portion of Lot 1, Block 11 of Map of Rancho San Bernardino, in the City of San Bernardino.
2. Deed real property to SANBAG being a portion of Parcel 1 of Parcel Map No. 1266, in the City of San Bernardino.
3. Accept real property from SANBAG being a portion of Lot 1, Block 11 of Map of Rancho San Bernardino, in the City of San Bernardino.

The Administrative & Finance Committee meeting adjourned at 11:28 a.m. The next Administrative & Finance Committee Meeting is scheduled for Monday, February 10, 2014, at 11:00 a.m., with location posted on the Omnitrans website and at Omnitrans' San Bernardino Metro Facility.

Prepared by:

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Vicki Dennett, Assistant to CEO/General Manager

ITEM # E4

## **AGENCY MANAGEMENT REPORT**

**January 2014**  
**FISCAL YEAR 2014**

### **Agency Results**

#### **Operating Revenue**

January total Operating Revenue of \$6,283,830 is 319,989 over budget. Year-to-Date (YTD) Operating Revenue of \$42,567,111 is \$820,224 over budget. The positive current month and YTD variances are principally driven by the receipt of advertising revenue and CNG fuel tax revenue.

#### **Operating Expense**

January Operating Expense of \$5,538,647 is \$425,193 or 7% under budget. YTD Operating Expense of \$38,835,186 is \$2,911,701 or 7% under budget. The positive current month and YTD variances are driven by labor, fringe benefits, material and supplies, and occupancy all coming in under budget.

#### **Ridership**

During the month of January, Omnitrans carried a total of 1,338,237 passengers. This consisted of 1,296,545 on Fixed Route service and 41,692 on Demand Response routes. YTD Ridership is 9,264,625, which reflects a total system decrease of 2.44% when compared to the same period last year.

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

During the month of January, Omnitrans provided a total of 67,377 revenue hours reflecting a decrease of .62% versus the same period last year. Omnitrans logged a total of 906,193 revenue miles during the month, reflecting a decrease of 1.47% when compared to same period last year. YTD Omnitrans provided a total of 465,051 revenue hours reflecting a decrease of .65% versus the same period last year. Also, YTD Omnitrans logged a total of 6,309,449 revenue miles reflecting a decrease of .94% when compared to same period last year.

### **Farebox Recovery Ratio**

January farebox revenue for Fixed Route/Omnalink is \$1,079,001 versus \$1,113,832 for the same period last year. This is a decrease of 3.13%. The farebox recovery ratio for the month is 24.40%. YTD farebox revenue for Fixed Route/Omnalink is \$7,663,541 versus \$7,676,430 for the same period last year. This is an increase of .33%. YTD farebox recovery ratio is 24.21%.

January farebox revenue for Access is \$122,074 versus \$121,885 for the same period last year. This is an increase of .15%. Farebox recovery ratio for the month is 11.35%. YTD farebox revenue for Access is \$906,171 versus \$895,308 for the same period last year. This is an increase of 1.21%. YTD farebox recovery ratio is 13.07%.

### **Financials**

Total Salaries and Benefits of \$3,124,095 are \$333,822 under budget for the month of January. YTD Salaries and Benefits of \$22,988,561 are \$1,216,859 or 5% under budget. The positive current month and YTD variance is primarily driven by headcount being less than planned.

Total Services are \$151,821 or \$107,310 under budget in January. YTD Total Services are \$1,195,356 or \$543,556 under budget. The positive current month and YTD variances are driven by professional services being less than planned.

Materials and Supplies are \$694,095 or \$77,002 under budget in January. YTD Materials and Supplies are \$4,749,144 or \$648,531 under budget. The positive monthly and YTD variances are driven by CNG fuel and gasoline being less than planned.

Purchased Transportation is \$798,468 or \$38,156 over budget in January. YTD Purchased Transportation is \$5,110,939 or \$211,246 under budget. The negative current month variance is primarily driven by operating in a month with no holidays or days of no service. The YTD variance is driven by favorable pricing in the current contract based on milestones being met.

Other Expenses are \$729,961 or \$49,474 over budget in January. YTD Other Expenses are \$4,547,797 or \$290,608 under budget. The negative current month variance is principally driven by our annual payment of fuel taxes. The positive YTD variance is driven by the timing of repairs and maintenance and payments related to software maintenance contracts making occupancy cost lower than planned.

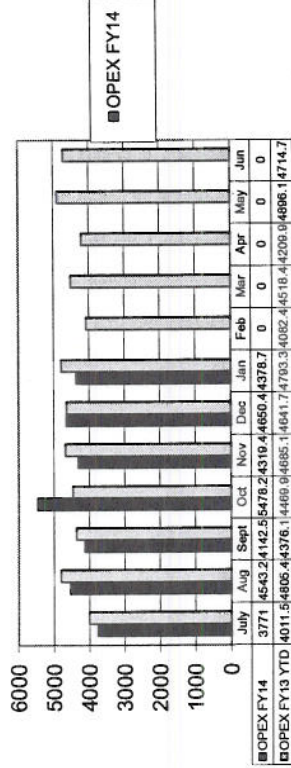
**PERFORMANCE STATISTICS  
FISCAL YEAR 2014  
January 2014**

	<u>Current Month</u>		<u>YR/YR inc/(dec) CURRENT</u>	<u>Year-To-Date</u>		<u>YR/YR inc/(dec) YTD</u>
	<u>January 2014</u>	<u>January 2013</u>		<u>January 2014</u>	<u>January 2013</u>	
<b>Total Passenger Revenue &amp; Subsidy</b>						
Fixed Route	\$1,076,379	\$1,110,729	-3.1%	\$7,645,004	\$7,656,692	-0.2%
Demand Response	\$124,695	\$124,988	-0.2%	\$924,618	\$915,045	1.0%
<b>Total Passengers</b>						
Fixed Route	1,296,545	1,289,925	0.5%	8,977,039	9,210,332	-2.5%
Demand Response	41,692	42,266	-1.4%	287,586	285,777	0.6%
<b>Farebox Recovery Ratio</b>						
Fixed Route/OmniLink	24.40%	23.04%		24.21%	23.95%	
Access	11.35%	10.84%		13.07%	12.58%	
<b>Total Passengers per Revenue Hour</b>						
Fixed Route	24.8	24.7	0.2%	24.7	25.5	-3.1%
Demand Response	2.8	2.7	2.6%	2.8	2.7	5.8%
<b>Revenue per Passenger</b>						
Fixed Route	0.83	0.86	-3.6%	0.85	0.83	2.4%
Demand Response	2.99	2.96	1.1%	3.22	3.20	0.4%
<b>Cost per Passenger</b>						
Fixed Route	3.38	3.72	-9.1%	3.48	3.45	1.0%
Demand Response	26.86	27.60	-2.7%	25.41	25.82	-1.6%
<b>Cost per Revenue Hour</b>						
Fixed Route	83.66	91.90	-9.0%	86.23	88.12	-2.2%
Demand Response	74.46	74.59	-0.2%	71.51	68.67	4.1%

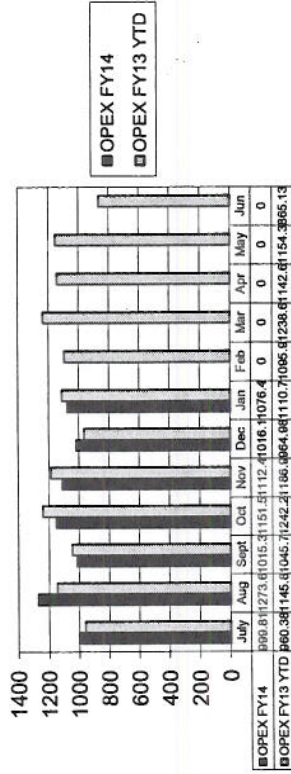
	<u>Actual</u>	<u>Target</u>
<b>On Time Performance</b>		
Fixed Route	87.18%	90%
Demand Response	91.71%	90%

**Headcount** 621 669  
(includes PT Operators, excludes IPMO)

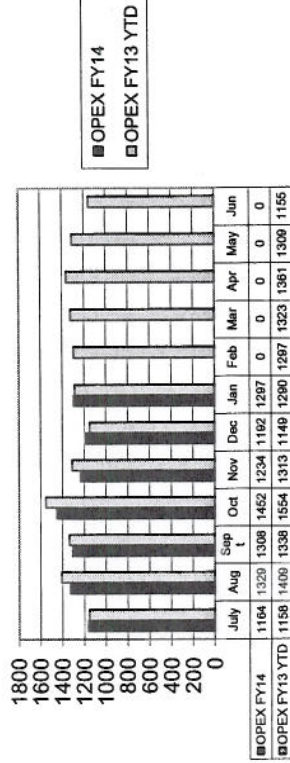
### Fixed Route Operating Expense Thousands



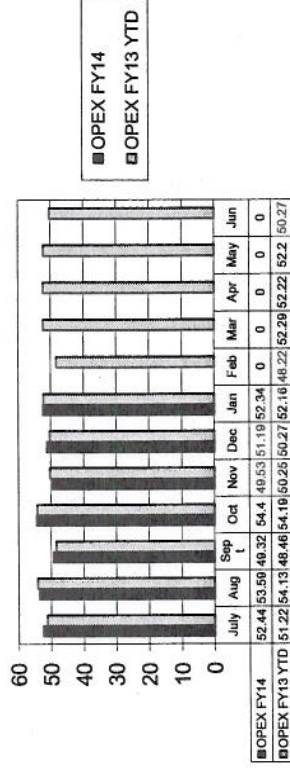
### Fixed Route Passenger Revenue Thousands



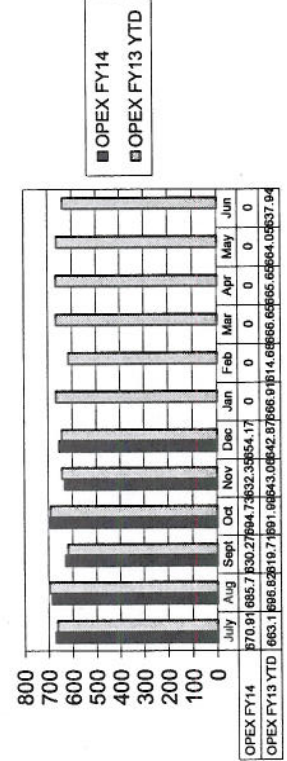
### Fixed Route Ridership Thousands



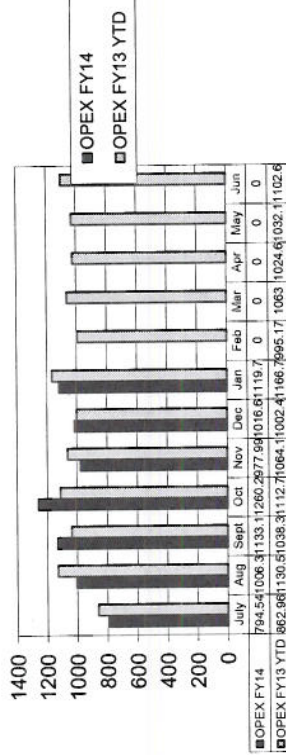
### Fixed Route Revenue Hours Thousands



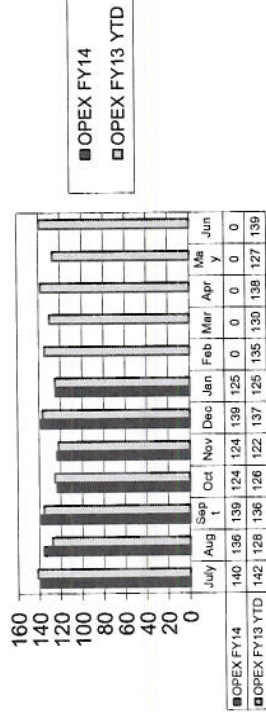
### Fixed Route Revenue Miles Thousands



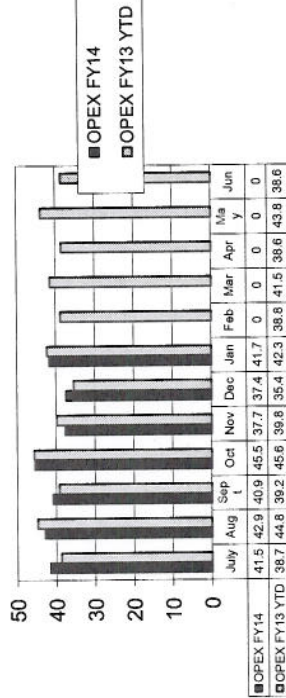
### Demand Response Operating Expense Thousands



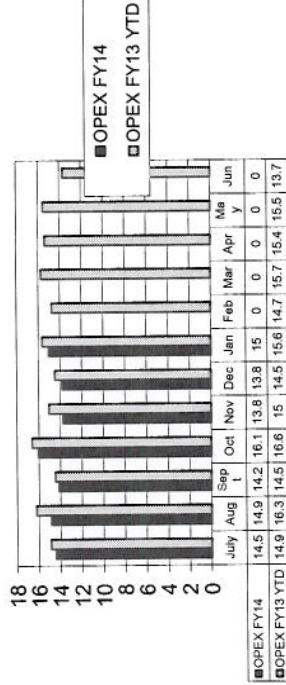
### Demand Response Passenger Revenue Thousands



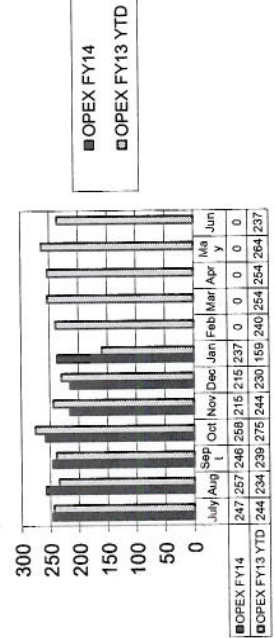
### Demand Response Ridership Thousands



### Demand Response Revenue Hours Thousands



### Demand Response Revenue Miles Thousands



# Statement of Operations Fiscal Year: 2014

CURRENT MONTH: January 2014

YEAR-TO-DATE: December 2013

	<u>Actual</u>	<u>Budget</u>	<u>Fav/(Unf)</u>	<u>% of Budget</u>	<u>Operating Revenues</u>	<u>Actual</u>	<u>Budget</u>	<u>Fav/(Unf)</u>	<u>% of Budget</u>
	1,172,244	1,229,823	(57,579)	95%	Passenger Fares	8,367,307	8,608,758	(241,451)	97%
	28,830	27,477	1,353	105%	Measure I Subsidy - Fares	202,405	192,341	10,064	105%
	397,523	397,523	0	100%	Measure I Subsidy - Operating	2,782,661	2,782,659	2	100%
	207,223	25,000	182,223	829%	Auxiliary Transportation Revenue	356,893	175,000	181,893	204%
	219,971	7,083	212,888	3105%	Non-Transportation Revenue	902,996	49,583	853,413	1821%
	3,029,143	3,029,143	(0)	100%	LTF Operating	21,204,001	21,204,004	(3)	100%
	145,337	145,337	0	100%	STAF Operating	1,017,359	1,017,359	0	100%
	0	0	0	0%	JARC - Operating Assistance	0	0	0	0%
	1,083,558	1,102,455	(18,896)	98%	Capital Funds for Operations	7,733,488	7,717,182	16,306	100%
	6,283,830	5,963,841	319,989	105%	Total Revenues	42,567,111	41,746,887	820,224	102%
					<u>Operating Expenses</u>				
	1,901,260	2,126,187	224,926	89%	Labor	14,483,588	14,883,308	399,719	97%
	1,222,834	1,331,730	108,896	92%	Fringe Benefits	8,504,973	9,322,112	817,139	91%
	151,821	259,130	107,310	59%	Services	1,195,356	1,738,912	543,556	69%
	694,095	771,096	77,002	90%	Materials and Supplies	4,749,144	5,397,675	648,531	88%
	291,565	268,350	(23,215)	109%	Occupancy	1,594,548	1,878,450	283,902	85%
	491,013	429,616	(61,397)	114%	Casualty and Liability	3,281,315	3,007,313	(274,002)	109%
	40,577	4,107	(36,470)	988%	Taxes and Fees	43,410	28,748	(14,662)	151%
	798,468	760,312	(38,156)	105%	Purchased Transportation	5,110,939	5,322,185	211,246	96%
	14,557	76,422	61,865	19%	Printing and Advertising	137,080	534,951	397,871	26%
	(107,751)	(98,008)	9,743	110%	Miscellaneous Expense	(508,555)	(611,056)	(102,501)	83%
	40,208	34,899	(5,310)	115%	Lease and Rental	243,388	244,290	901	100%
	5,538,647	5,963,841	425,193	93%	Total Operating Expense	38,835,186	41,746,887	2,911,701	93%
	745,182	0	745,182		Net Gain (Net Loss)	3,731,925	(0)	3,731,925	
	3,124,095	3,457,917	333,822	90%	Sal & Ben	22,988,561	24,205,420	1,216,859	95%
	729,961	680,486	(49,474)	107%	Other	4,547,797	4,838,405	290,608	94%

2/24/2014

**DATE:** March 5, 2014

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

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

**FROM:** Mae Sung, Accounting Manager

**SUBJECT: INVESTMENT STATUS**

**FORM MOTION**

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

**BACKGROUND**

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

**SUMMARY**

All of the Agency's investments are invested with the Local Agency Investment Fund (LAIF) and Union Bank. Please refer to the attachment for the investment activity of the Agency for the month of January 2014. Sufficient funds are available to meet the obligations of the Agency for the next thirty-one days.

PSG:MS

OMNITRANS  
Treasurer's Report  
Month ending January 2014

Institution - Investment Type	Description	Starting Balance	Deposits	Disbursements	Interest Yield	Ending Balance
Cash and Investments Under the Direction of the Treasurer						
Local Agency Investment Fund		\$ 11,793,206.59			0.26%	
				\$ (1,000,000.00)	0.26%	
				\$ (1,000,000.00)	0.26%	
	Interest for QTR	\$ 7,091.81			0.26%	
		\$ 9,000,000.00		\$ (2,500,000.00)	0.24%	
				\$ (1,400,000.00)	0.23%	
		\$ 20,800,298.40		\$ (5,900,000.00)		
Net LAIF Funds				\$ 14,900,298.40		\$ 14,900,298.40
Fair Marketing Value	Fair Value Factor				1.000287620	\$ 14,904,584.02
Union Bank Money Market GMRA		\$ 1,846,276.18				
	Interest	\$ 32.63			0.02%	
				\$ (10,640.00)		
		\$ 1,846,308.81		\$ (10,640.00)		
				\$ 1,835,668.81		
				\$ 1,835,668.81		\$ 1,835,668.81
Citybank Morgan Stanley Futures Account		\$ 268,904.41				
	Gain/Loss for month	\$37,272.20				
		\$ 306,176.61		\$ -		
				\$ 306,176.61		\$ 306,176.61
		\$ 989,781.90				
	Passenger	\$ 1,104,956.10				
	Grants' Revenue	\$ 13,037,725.12				
	Miscellaneous Revenue	\$ 421,626.60				
	Transfers From (To) LAIF	\$ 5,900,000.00		\$ (9,000,000.00)		
	Transfers From (To) Money Market	\$ 10,640.00				
	Transfers From (To) Imprest Account	\$ 19,745.83		\$ (75,000.00)		
	Accounts Payable			\$ (8,186,107.73)		
	Payroll and Payroll Taxes			\$ (2,114,472.27)		
	Employee Benefits			\$ (571,041.29)		
	Bank Service Charge			\$ (8,032.22)		
Net Union Bank Operating Funds		\$ 21,484,475.55		\$ (19,954,653.51)		
				\$ 1,529,822.04		\$ 1,529,822.04
Petty Cash		\$ 3,700.00		\$ 3,700.00		\$ 3,700.00

Cash and Investments Under the Direction of Fiscal Agents

Union Bank	\$ 75,000.00					
Workmens' Comp. Adjuster						
Pacific Claims Management						\$ 75,000.00
Total Cash & Investments						\$ 18,654,951.48

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

Prepared by: \_\_\_\_\_  
Mae Sung, Accounting Manager

Approved by: \_\_\_\_\_  
P. Scott Graham, CEO/General Manager, Treasurer

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

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

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

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

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

Interest earned by the Master Control account is used as a partial offset to the

monthly bank service charges.

**DATE:** March 5, 2014

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

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

**SUBJECT: PAYROLLS AND WARRANTS FOR JANUARY 2014**

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

Payroll Period	Amount	Register #
12/25/13-01/07/14	\$299,513.85	01
01/08/14-01/21/14	\$297,151.51	02

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

Payroll Period	Amount	Register #
12/16/13-12/29/13	\$900,864.82	01
12/30/13-01/12/14	\$843,246.14	02

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

Register Date	Amount	Register #
01/02/2014	\$4,732,189.97	663-664
01/09/2014	\$ 529,281.78	665
01/16/2014	\$1,977,648.94	666
01/23/2014	\$ 455,664.96	667
01/30/2014	\$ 491,322.08	668

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

PSG:MS

ITEM # E5

**DATE:** March 5, 2014

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

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

**FROM:** Andres Ramirez, sbX Construction Manager

**SUBJECT:** **CONSTRUCTION PROGRESS REPORT NO. 25 THROUGH  
JANUARY 23, 2014 - sbX E STREET CORRIDOR BRT PROJECT**

**FORM MOTION**

Receive and file Construction Progress Report No. 25 for the sbX E Street Corridor BRT Project through January 23, 2014.

*This item was reviewed by the Administrative and Finance Committee at its February 10, 2014, meeting, and recommended to the Board of Directors for receipt and file.*

**BACKGROUND**

This is Construction Progress Report No. 25 for the sbX E Street Corridor Project.

**CONCLUSION**

Receive and file Construction Progress Report No.25 for the sbX E Street Corridor BRT Project through January 23, 2014.

PSG:AR

Attachment



## **sbX E Street Corridor Bus Rapid Transit (BRT) Project**

### **Construction Progress Report No. 25**

**As of January 23, 2014**

**Submitted By:**

**JACOBS**

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

**TABLE OF CONTENTS**

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

## **I. PROJECT STATUS SUMMARY**

### **A. Project Description – sbX Corridor**

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

The Refined LPA includes:

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

### **B. Summary Status Update (Accomplishments) – sbX Corridor**

- Continued to install art glass and station glass at all stations.
- Completed installation of platform pavers at Baseline station north bound.
- Completed roof panels at Baseline stations north and south bound.
- Continued testing station systems for integration into overall BRT system.
- Continued testing of electrical equipment for stations and traffic signals.
- Connected power to the traffic signal at Anderson and Court Street.
- Continued installing signage and striping for the entire project.

### **C. February Work – sbX Corridor**

- Complete the relocation of Cross Connect on the north side of Hospitality Lane, west of Hunts Lane.
- Complete all final striping Kendall.
- Complete all testing required for Level One.
- Complete systems start up and integration.

### **D. Project Description – Vehicle Maintenance Facility (VMF)**

The Omnitrans' Vehicle Maintenance Facility is a 4.4-acre facility maintaining and servicing the Omnitrans' bus fleet, comprised of over 160 buses. Modifications to Omnitrans' facility include the demolition of a bus washing station, removal of abandoned underground fuel tanks and new construction of a bus washing

system, a new Genset building, a three-lane CNG fueling station, and re-configuring the bus parking area. Modifications to the maintenance building are made in order to accommodate Omnitrans' 60-foot articulated bus fleet.

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

- Completed most of the backfill of the UST excavation; completion pending final verification of soil volumes.
- Placed slurry around pit walls inside Maintenance Building A. Formwork and reinforcing steel installation for the pit walls and surrounding slab is ongoing.
- Completed slab-on-grade removal at the old Building B, and started grading and excavation for new buildings B and C.
- Completed removal of the 600-gallon diesel UST.
- Completed excavation and placement of reinforcing steel for new booster pump pad.
- Startup and testing of the new thirty-yard compactor, including final inspection, training, and turnover was completed.
- Received delivery of the new compressors in late December 2013.

#### **F. February Work – Vehicle Maintenance Facility (VMF)**

- Complete concrete placement for the new bus lift pits in Maintenance Building A.
- Relocate the buffer tanks and start grading and excavation for the new Fuel Facility (Building C), and the sewer line reroute work pending execution of that change order.
- Excavation and grading for the new Bus Wash Facility (Building B) has started.
- Complete construction of the new booster pump and enclosure, and complete the water point of connection at the compressor room.
- Install the new compressors and resume work at the new battery room.

## **II. PROJECT SCHEDULE**

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

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

#### **A. Summary of Project Schedule – sbX Corridor**

The Omnitrans CM team and Contractor attended a DRB hearing regarding the schedule. The DRB directed Contractor to resubmit a schedule to include all actual dates for all work completed. Contractor is due to submit this new schedule by the first week of February.

Once this occurs, the CM team will review and submit comments to the DRB members for their review and comment.

### **Summary of Project Schedule – Vehicle Maintenance Facility (VMF)**

The Contractor resubmitted a combined October/November 2013 Monthly Schedule Update (UP04R), with a data date of November 4, 2013, on January 8, 2014. The schedule update shows the project behind schedule, with approximately (+/-) 219-calendar days of negative float projecting a Substantial Completion Date in early/mid July 2014. The resubmittal is under review.

On October 28, 2013, the Contractor formally submitted a Time Impact Evaluation (TIE) for impacts incurred through the turnover of the existing Building C (on September 19, 2013). The TIE is under evaluation and it is expected that negotiations will start in mid/late January 2014.

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

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

### **A. sbX Corridor**

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

Total RFIs – 973	Total Submittals – 824	Total NCRs - 26
Total Open – 10	Total Open – 42	Total Open - 7

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

### **B. Vehicle Maintenance Facility (VMF)**

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

Total RFIs – 165	Total Submittals – 305	Total NCRs – 11
Total Open – 5	Total Open – 5	Total Open – 3

## **IV. SAFETY**

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

sbX Corridor - As of December 25, 2013 there are 384,385 “no-lost time” hours.  
VMF - As of December 25, 2013 there are 10,913 “no-lost time” hours.

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

BUDGET AS OF DECEMBER 31, 2013

Approved Budget	\$191,706,000
Cost to Date	\$145,618,922
Estimate to Complete	\$ 43,978,294
Estimate at Completion	\$189,597,216

**SBX CORRIDOR PROJECT COSTS - AS OF DECEMBER 31, 2013**

	<b>CURRENT AUTHORIZED</b>	<b>CURRENT INVOICES PAID</b>	<b>REMAINING CONTRACT BALANCE</b>
JACOBS	\$11,852,647	\$8,499,946	\$3,352,701
PARSONS	\$18,097,876	\$16,841,587	\$1,256,289
GRIFFITH/COMET	\$83,885,030	\$69,761,425	\$14,123,605
TOTAL	\$113,835,553	\$95,102,958	\$18,732,595

**VMF CORRIDOR PROJECT COSTS - AS OF DECEMBER 31, 2013**

	<b>CURRENT AUTHORIZED</b>	<b>CURRENT INVOICES PAID</b>	<b>REMAINING CONTRACT BALANCE</b>
STV Inc.	\$1,418,132	\$1,188,925	\$229,207
USS Cal Builders	\$11,471,646	\$3,758,379	\$7,713,267
Total	\$12,889,778	\$4,947,304	\$7,942,474

**SBX CORRIDOR CONTRACT TIME**

<b>Activity</b>	<b>Days</b>	<b>Date</b>
Notice to Proceed		11/21/11
Calendar Days per Original Contract	730	
Original Completion Date		12/21/13
Calendar Days Completed as of January 22, 2014	734	
CCO Time Extension to Date	0	
Required Completion Days/Date as of January 22, 2014	-32	12/21/13
Forecasted Completion Date as of January 22, 2014		TBD*
Percent Time Elapsed	104%	

**VMF CONTRACT TIME**

<b>Activity</b>	<b>Days</b>	<b>Date</b>
Notice to Proceed		12/10/12
Calendar Days per Original Contract	425	
Original Completion Date		02/08/14
Calendar Days Completed as of January 22, 2014	408	
CCO Time Extension to Date	0	
Required Completion Days/Date as of January 22, 2014	17	02/08/14
Forecasted Revenue Start Date as of January 22, 2014		04/30/14
Percent Time Elapsed	96%	

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

**CHANGE ORDERS****SBX CORRIDOR CONTRACT CHANGE ORDERS - As of January 22, 2014**

<b>Change Order Status</b>	<b>Amount Approved</b>
Approved Change Orders	\$18,735,410.00
Pending Change Orders	\$416,253.00
Potential Change Orders	\$1,575,000.00
<b>Total</b>	<b>\$20,726,663.00</b>

**VMF CONTRACT CHANGE ORDERS - As of January 22, 2014**

<b>Change Order Status</b>	<b>Amount</b>
Approved Change Orders	\$802,154.60
Pending Change Orders	\$271,753.62
Potential Change Orders	\$2,407,724.22
<b>Total</b>	<b>\$3,481,632.44</b>

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

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

## VI. Project Photographs

### SBX CORRIDOR PROGRESS PHOTOS



1. Loma Linda - Anderson West Station.



2. Baseline Station

**VMF PROGRESS PHOTOS**

1. Removal of the 600 Gallon Underground Diesel Tank (Last of Underground Tanks removed from VMF Property – 8 Tanks Total).



2. Placing Rebar and Installing Formwork for Bus Lift Pits in Maintenance Facility (Building A).

**IPMO/sbX Project Cost Report**  
**Period Ended 12/31/13**

Description	Current Budget	Expenditures \$	%	Remaining Budget	Estimate to Complete	Estimate at Completion	Budget Forecast Variance
BRT Construction	84,637,000	69,837,768	82.5%	14,799,232	18,797,381	88,635,149	(3,998,149)
Vehicle Maintenance Facility (VMF) Construction	8,131,000	3,758,379		4,372,621	11,385,802	15,144,181	(7,013,181)
Vehicles - Design & Manufacturing	16,628,000	14,800,861	89.0%	1,827,139	1,537,869	16,338,730	289,270
ROW Acquisition Services	10,357,000	10,940,793	105.6%	(583,793)	964,334	11,905,127	(1,548,127)
3rd Party Utilities Design & Relocation	1,003,000	978,937	97.6%	24,063	127,180	1,106,117	(103,117)
BRT Design	17,849,400	16,841,587	94.4%	1,007,813	9,495	16,851,082	998,318
VMF Design	1,007,600	1,203,325	119.4%	(195,725)	492,607	1,695,932	(688,332)
Other Professional, Technical & Management Services	34,020,000	27,257,272	80.1%	6,762,728	10,663,626	37,920,898	(3,900,898)
<b>SUB-TOTAL</b>	<b>173,633,000</b>	<b>145,618,922</b>		<b>28,014,078</b>	<b>43,978,294</b>	<b>189,597,216</b>	<b>(15,964,216)</b>
Unallocated Contingency	18,073,000	-		18,073,000	2,108,784	2,108,784	15,964,216
<b>TOTAL</b>	<b>191,706,000</b>	<b>145,618,922</b>	<b>76.0%</b>	<b>46,087,078</b>	<b>46,087,078</b>	<b>191,706,000</b>	<b>-</b>

**IPMO/sbX Project  
Through 12/31/13**

Standard Cost Category (SCC)	Description	Approved Current Budget	Expenditures \$ %	Remaining Budget	Estimate to Complete	Estimate at Completion	Budget Forecast Variance
<b>10</b>	<b>GUIDEWAY &amp; TRACK ELEMENTS</b>	<b>19,725,000</b>	<b>16,417,324 83.2%</b>	<b>\$ 3,307,676</b>	<b>\$ 3,129,184</b>	<b>\$ 19,546,508</b>	<b>\$ 178,492</b>
10.02	Guideway: At-grade semi-exclusive (allows cross-traffic)	\$ 18,353,000	14,509,810 79.1%	\$ 3,843,190	\$ 2,773,225	\$ 17,283,035	\$ 1,069,965
10.03	Guideway: At-grade in mixed traffic	\$ 1,372,000	1,907,514 139.0%	\$ (535,514)	\$ 355,959	\$ 2,263,473	\$ (891,473)
<b>20</b>	<b>STATIONS, STOPS, TERMINALS, INTERMODAL</b>	<b>14,917,000</b>	<b>11,762,028 78.8%</b>	<b>\$ 3,154,972</b>	<b>\$ 2,574,051</b>	<b>\$ 14,336,079</b>	<b>\$ 580,921</b>
20.01	At-grade station, stop, shelter, mall, terminal, platform	14,917,000	11,762,028 78.8%	\$ 3,154,972	\$ 2,574,051	\$ 14,336,079	\$ -
<b>30</b>	<b>SUPPORT FACILITIES: YARDS, SHOPS, ADMIN. BLDGS</b>	<b>\$ 8,131,000</b>	<b>3,758,378 46.2%</b>	<b>\$ 4,372,622</b>	<b>\$ 11,385,803</b>	<b>\$ 15,144,181</b>	<b>\$ (7,013,181)</b>
30.02	Light Maintenance Facility	\$ 4,265,000	2,920,260 68.5%	\$ 1,344,740	\$ 8,740,759	\$ 11,661,019	\$ (7,396,019)
30.05	Yard and Yard Track	\$ 3,866,000	838,118 0.0%	\$ 3,027,882	\$ 2,645,044	\$ 3,483,162	\$ 382,838
<b>40</b>	<b>SITEWORK &amp; SPECIAL CONDITIONS</b>	<b>34,271,000</b>	<b>23,639,475 69.0%</b>	<b>\$ 10,631,525</b>	<b>\$ 7,019,122</b>	<b>\$ 30,658,597</b>	<b>\$ 3,612,403</b>
40.01	Demolition, Clearing, Earthwork	\$ 4,741,000	329,366 6.9%	\$ 4,411,634	\$ 133,428	\$ 462,794	\$ 4,278,206
40.02	Site Utilities, Utility Relocation	\$ 4,993,000	8,737,099 175.0%	\$ (3,744,099)	\$ 2,540,146	\$ 11,277,245	\$ (6,284,245)
40.05	Site structures including retaining walls, sound walls	\$ 90,000	72,224 80.2%	\$ 17,776	\$ 571,642	\$ 643,866	\$ (553,866)
40.06	Pedestrian / bike access and accommodation, landscaping	\$ 6,925,000	2,912,744 42.1%	\$ 4,012,256	\$ 2,007,246	\$ 4,919,990	\$ 2,005,010
40.07	Automobile, bus, van accessways including roads, parking lots	\$ 3,601,000	3,808,073 105.8%	\$ (207,073)	\$ 439,276	\$ 4,247,349	\$ (646,349)
40.08	Temporary Facilities and other indirect costs during construction	\$ 13,921,000	7,779,969 55.9%	\$ 6,141,031	\$ 1,327,384	\$ 9,107,353	\$ 4,813,647
<b>50</b>	<b>SYSTEMS</b>	<b>\$ 16,727,000</b>	<b>18,997,878 113.6%</b>	<b>\$ (2,270,878)</b>	<b>\$ 1,528,425</b>	<b>\$ 20,526,303</b>	<b>\$ (3,799,303)</b>
50.02	Traffic signals and crossing protection	\$ 10,810,000	6,093,816 56.4%	\$ 4,716,184	\$ 404,220	\$ 6,498,036	\$ 4,311,964
50.05	Communications	\$ 4,210,000	7,930,137 188.4%	\$ (3,720,137)	\$ 498,130	\$ 8,428,267	\$ (4,218,267)
50.06	Fare collection system and equipment	\$ 1,707,000	4,973,925 291.4%	\$ (3,266,925)	\$ 626,075	\$ 5,600,000	\$ (3,893,000)
	Pending Change Orders				\$ 1,979,236	\$ 1,979,236	\$ (1,979,236)
	Risk				\$ 2,694,540	\$ 2,694,540	\$ (2,694,540)
	<b>Construction Subtotal (10-50)</b>	<b>93,771,000</b>	<b>74,575,083 79.5%</b>	<b>\$ 19,195,917</b>	<b>\$ 30,310,361</b>	<b>\$ 104,885,444</b>	<b>\$ (11,114,444)</b>
<b>60</b>	<b>ROW, LAND, EXISTING IMPROVEMENTS</b>	<b>\$ 6,532,000</b>	<b>\$ 6,006,388 92.0%</b>	<b>\$ 525,612</b>	<b>\$ 959,604</b>	<b>\$ 6,965,992</b>	<b>\$ (433,992)</b>
60.01	Purchase or lease of real estate	\$ 6,327,000	5,841,458 92.3%	\$ 485,542	\$ 919,534	\$ 6,760,992	\$ (433,992)
60.02	Relocation of existing households and businesses	\$ 205,000	164,930 80.5%	\$ 40,070	\$ 40,070	\$ 205,000	\$ -
<b>70</b>	<b>VEHICLES</b>	<b>\$ 16,628,000</b>	<b>\$ 14,800,861 89.0%</b>	<b>\$ 1,827,139</b>	<b>\$ 1,537,869</b>	<b>\$ 16,338,730</b>	<b>\$ 289,270</b>
70.04	Bus	\$ 15,448,000	14,800,861 95.8%	\$ 647,139	\$ 630,821	\$ 15,431,682	\$ 16,318
70.06	Non-revenue vehicles	\$ 250,000	- 0.0%	\$ 250,000	\$ -	\$ -	\$ 250,000
70.07	Spare parts	\$ 930,000	- 0.0%	\$ 930,000	\$ 907,048	\$ 907,048	\$ 22,952
<b>80</b>	<b>PROFESSIONAL SERVICES</b>	<b>56,702,000</b>	<b>50,236,590 88.6%</b>	<b>\$ 6,465,410</b>	<b>\$ 11,170,460</b>	<b>\$ 61,407,050</b>	<b>\$ (4,705,050)</b>
80.01	Preliminary Engineering	\$ 12,921,000	12,876,525 99.7%	\$ 44,475	\$ 17,502	\$ 12,894,027	\$ 26,973
80.02	Final Design	\$ 7,261,000	6,949,913 95.7%	\$ 311,087	\$ 492,209	\$ 7,442,122	\$ (181,122)
80.03	Project Management for Design and Construction	\$ 15,997,000	10,998,706 68.8%	\$ 4,998,294	\$ 3,723,996	\$ 14,722,702	\$ 1,274,298
80.04	Construction Administration & Management	\$ 6,632,000	8,499,946 128.2%	\$ (1,867,946)	\$ 4,392,703	\$ 12,892,649	\$ (6,260,649)
80.05	Professional Liability and other Non-Construction Insurance	\$ 1,112,000	- 0.0%	\$ 1,112,000	\$ 500,000	\$ 500,000	\$ 612,000
80.06	Legal; Permits; Review Fees by other agencies, cities, etc.	\$ 10,596,000	10,911,500 103.0%	\$ (315,500)	\$ 1,319,050	\$ 12,230,550	\$ (1,634,550)
80.07	Surveys, Testing, Investigation, Inspection	\$ 1,463,000	- 0.0%	\$ 1,463,000	\$ 25,000	\$ 25,000	\$ 1,438,000
80.08	Start up	\$ 720,000	- 0.0%	\$ 720,000	\$ 700,000	\$ 700,000	\$ 20,000
	<b>Subtotal (10-80)</b>	<b>\$ 173,633,000</b>	<b>\$ 145,618,922 83.9%</b>	<b>\$ 28,014,078</b>	<b>\$ 43,978,294</b>	<b>\$ 189,597,216</b>	<b>\$ (15,964,216)</b>
<b>90</b>	<b>UNALLOCATED CONTINGENCY</b>	<b>18,073,000</b>	<b>- 0.0%</b>	<b>\$ 18,073,000</b>	<b>\$ 2,108,784</b>	<b>\$ 2,108,784</b>	<b>\$ 15,964,216</b>
	<b>Subtotal (10-90)</b>	<b>191,706,000</b>	<b>145,618,922 76.0%</b>	<b>\$ 46,087,078</b>	<b>\$ 46,087,078</b>	<b>\$ 191,706,000</b>	<b>\$ -</b>
<b>100</b>	<b>FINANCE CHARGES</b>	<b>-</b>	<b>-</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
	<b>TOTAL PROJECT COST (10-100)</b>	<b>191,706,000</b>	<b>145,618,922 76.0%</b>	<b>\$ 46,087,078</b>	<b>\$ 46,087,078</b>	<b>\$ 191,706,000</b>	<b>\$ -</b>

ITEM # E6

**DATE:** March 5, 2014

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

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

**FROM:** Samuel Gibbs, Director of Internal Audit Services

**SUBJECT: INTERNAL AUDIT SERVICES STATUS UPDATE**

**FORM MOTION**

Receive and file status update on the Agency's Internal Audit Services audit program as of December 30, 2013.

*This item was reviewed by the Administrative and Finance Committee at its February 10, 2014, meeting, and recommended to the Board of Directors for receipt and file.*

**BACKGROUND**

The Department of Internal Audit Services (DIAS) is providing a status update to the Administrative and Finance Committee and the Board of Directors in accordance with the FY 2014 Annual Audit Plan. Staff will continue to work with Omnitrans' management to assess management practices, identify risk, and provide fair and objective assessments with reports submitted regularly for the Committee's review.

**CONCLUSION**

In accordance with the FY2014 risk assessment and audit plan submitted to the Board of Directors on September 4, 2013, the following audits were completed as part of the FY 2014 risk assessment and audit plan:

- Procurement System Review (PSR)
- Employee Recreation Committee
- P-Card
- BCI Procurement Protest
- York Procurement Protest
- EES Procurement Protest
- Epic Landscape Services Protest
- Quality Assurance Audit
- Preparation for Triennial Review
- Succession Planning

PSG:SG

- SAP and IT
- Non-Quality Related sbX assessments



**Omnitrans Department of Internal Audit Services**

**Audit Workplan Update December 2013**

**Auditor Name: Dr. Samuel Gibbs**

**Audit Date: December 30, 2013**

## TABLE OF CONTENTS

	<b><u>PAGE</u></b>
INTRODUCTION	3
Background	3
Purpose	3
Recommended Areas for Audits	3
UPDATES	
Audit Resources Used	4

## **INTRODUCTION**

### **Background**

Omnitrans established the Department of Internal Audit Services (DIAS) to strengthen internal controls and to promote the economy, efficiency and effectiveness of Omnitrans' operations. The mission of the DIAS is to provide independent, objective assurances of Omnitrans. The DIAS will help Omnitrans accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes. The DIAS shall carry out independent and objective audits and reviews to accomplish its mission. The approach to audits and reviews are outlined in the Agency's annual audit plan.

The FY 2014 audit workplan recommended 10 areas for audit engagements, 16 areas for monitoring, and six areas for possible audit engagements. From July 2013 to December 2013, four audits were conducted; under special projects there was the review of four procurement protests; the FY 2014 workplan called for detailed preparation throughout the Agency for the upcoming triennial review; there was daily involvement and follow-up for the sbX quality assurance and construction activities; and time was spent assisting with SAP system integration follow-up.

### **Purpose**

Internal Audit Services is providing a status update to the Interim CEO/GM, the Administrative and Finance Committee and the Board of Directors in accordance with the FY 2014 Annual Audit Plan. The understanding is, all elements of the audit plan might not be addressed within a given timeframe, and completion is dependent on available resources. Provided is an overview of audit activities from July 2013 until December 2013. Staff will continue to work with Omnitrans' management to assess management practices, identify risk, and provide fair and objective assessments, with reports submitted regularly for the Interim CEO/GM's and Committee's review.

### **Recommended Areas for Audit Resources**

According to the FY 2014 workplan, risk can be mitigated by conducting audit engagements in the following areas:

- Construction quality audits and reporting
- Construction close-out audits
- Succession Planning, including performance management and employee development
- Information technology
- Grant Process
- sbX construction timelines, milestones, and invoicing
- Construction change order process
- The institutionalization of the SAP platform in three areas: knowledge sharing, improvement in production operation, and business integration.

- PSR reviews and audits to follow up on corrective actions to the 22 deficiencies
- Preparations for upcoming Financial Management Oversight (FMO) and Triennial review from the FTA

### **Audit Resources were allocated**

In accordance with the FY 2014 risk assessment and audit plan completed on June 24, 2013 and submitted to the Board of Directors on September 4, 2013, audit resources were applied in the following areas (please note this list is a highlight and not an exhausted representation of all areas where resources were used):

- Procurement System Review (PSR)
- Employee Recreation Committee
- P-Card
- Braughton Construction, Inc. Procurement Protest
- York Risk Services Group Procurement Protest
- Environmental Equipment Supply Procurement Protest
- Epic Landscape Services Procurement Protest
- Los Angeles Armor Transport
- Quality Assurance Audit
- Preparation for Triennial Review
- Succession Planning
- SAP and IT
- Non- Quality Related sbX assessments

The FY 2014 audit workplan provided recommended areas for audit engagements and brief overviews in each area for risk mitigation.

### **Procurement System Review (PSR)**

There were three areas relating to the PSR that were recommended for audit follow-up in the FY 2014 plan: training only, reviews, and audits.

Procurement Review- the Agency's procurement process was audited by the FTA in April 2013 and there were 60 elements reviewed, 32 were deemed non deficient, 22 deficient and 6 not applicable. The Department of Internal Audit Services will continue to randomly evaluate the effectiveness of the procurement processes and provide support to ensure that the controls are strengthened.

PSR Reviews and Audits- Follow up on the areas identified as deficient during the PSR. Some follow up called for reviews while others suggested full audits.

Procurement System Review (PSR) Details- Continued to perform random audits using the guidelines provided by the FTA for a PSR. Procurement System Review (PSR) audit included follow-up on procurement contracts. The review included an evaluation of spot checks,

checklists, and proper price and price/cost analysis. It was determined that all requirements were complied with as recommended by the FTA.

### Inspection results

**Training only.** The corrective action for the following areas was the requirement that training be conducted within 30 days of the final report for: Independent Cost Estimates, Brand Name Restrictions, Written Procurement Selection Procedures, Price Quotations [Small Purchases], Adequate Competition- Two or More Competitors, Bid Opening [Sealed Bid], Piggybacking, and Clauses. A grid was created that listed the training and included completion dates and sign-off.

**Reviews.** The corrective action consists of reviews to validate compliance (in some cases compliance is the validation of training) in the following areas: Contract Administration System, Price Quotations [Small Purchases], Clear, Accurate and Complete Specifications, and Adequate Competition- Two or More Competitors, Piggybacking, and Clauses

**Audits.** Audits were completed in the following areas: Award to Responsible Contractors, Fair and Reasonable Price Determination [Micro-Purchases], Evaluation [RFP], Sole Source If Other Award Is Inadequate, Cost Analysis Required [Sole Source], Evaluation of Options, Written Record of Procurement History, Exercise of Options, Out of Scope Changes, and Time and Materials Contracts.

**Overall Evaluation.** It is my opinion based on the interviews conducted, observations, and audits of contracts, purchase orders, and change orders that Omnitrans has complied with all corrected actions recommended by FTA. Some information relating to Time and Material Contracts is still being reviewed by the FTA and Omnitrans' staff.

### **Employee Recreation Committee (ERC)**

FY 2014 called for internal audit to conduct ongoing random and routine audits on the ERC activities and financial management process. Below are the findings and recommendations from the audit conducted July 16, 2013:

#### Finding

- The ERC received income from the revenue generated through the vending machines at both East and West Valley; ERC leadership is reviewing the increase in machine breakdowns and the request for reimbursements.
- Check stubs for all checks written since April 2012 until June 2013 were accounted for (checks 1991-2017), and all funds balanced.
- Reviewed bank statements for April 2012 through June 2013, and matched the deposits to the deposit stubs. All deposits were made in a timely manner for the amounts listed on the stubs.
- All recommendations from prior audits or reviews were complied with 100%.

- The minutes from the last meeting in January 2013 were requested and received. The next ERC meeting is scheduled for the third week of October 2013. Current minutes from the fall meeting were posted on the ERC bulletin board.
- An ongoing concern with the membership is members requesting and obtaining tickets at a cost to the ERC, and then that member does not attend the event.
- Terrence Gipson, President of the club, will be speaking with the vending machine vendor to request a healthier, fresher assortment of food in the machine. This will help to promote wellness in line with the objectives of the Agency.

### Overview and Recommendations

I have found a complete willingness on the part of the leadership of the ERC to conduct business appropriately and follow all recommendations made during prior audit and reviews. All previous recommendations have been implemented. There were no additional recommendations during this engagement.

### **P-Card**

Conduct biannual reviews of P-Card use within compliance of applicable laws, regulations, and Agency policy 3000.

### Findings

- During the time under review, approximately \$190,000.00 was spent using a P-Card. Of the \$190,000.00 spent, \$80,000 was spent by Maintenance, leaving \$110,000.00 for all other departments. Maintenance does conduct more vendor business than other departments, but should review whether all the transactions were necessary on a P-Card. The Procurement and Maintenance departments have worked together to establish contracts for these purchases where applicable.
- The purchase of gift card and gift certificates needs to be reviewed. The policy as written states that these purchases are not authorized. However, the P-Card Procedure does not exempt P-Cards for the purchase of gift certificates and gift cards. During the period under review many departments used P-Card to purchase gift certificates. Currently, a mechanism is in place that provides adequate checks and balances. The departments do have logs to account for the receipt and distribution of all gift cards and gift certificates. Policy and Procedures Directive needs to be aligned to ensure proper compliance
- P-Card was used by a department to purchase eight embroidered jackets for a total of \$460.08. The P-Card was also used to purchase cell phone accessories and other computer related accessories, which should be acquired through the IT department. This practice has been corrected.
- The CEO/GM has been given the authorization from the Board to exceed the \$2,500.00 limited on individual P-Cards as needed. There were the two cases that required this

authorization; both were deemed to be in compliance: August- Maintenance \$4,862.00, Operations \$2,814.00

### Overview and Recommendations

The P-Card process and procedures should be discussed regularly to ensure each user is familiar with its proper use. Ongoing education and recommended changes to the policy and procedures are encouraged. This ensures that the policy and employee knowledge are consistent with business needs and values. It is recommended that the P-Card policy is reviewed and updated by Finance to meet the current business needs.

### **Protest Panel**

Internal Audit served as the lead on the ad hoc agency protest review panel (APRP) from July 2013 to December 2013 on four protests. The APRP responsibility is included in the audit workplan under Procurement support. The four protests were York Risk Services Group, Inc. (York), Braughton Construction, Inc. (BCI), Environmental Equipment Supply (EES), and Epic Pest Control & Landscape.

(Please note that all comments from the four protesting entities are written in the original manner in which they were presented)

### **York**

#### Grounds for Protest

1. York contends that Omnitrans violated purchasing procedures outlined in RFP-HR13-182, Item S. regarding a conflict of interest and violations of Federal Transit Administration laws and regulations (Circular 4220.1F, k Page VI-5, 11/01/2008, 1, a and b) regarding conflicts of interest. These conflicts of interest resulted in Omnitrans releasing a RFP for TPA services when it had two optional extension years with York.

*Response:*

*RFP-HR13-182, Section I, Instructions to Proposers § S – Conflict of Interest, “Firms are obligated to fully disclose to Omnitrans in writing of Conflict of Interest issues as soon as they are known to the firm. All disclosures must be disclosed at the time of Proposal submittal.”*

*The Panel found that the proposal submitted by Pacific Claims Management was in compliance with this requirement. Upon conclusion of the RFP evaluation process, a determination was made by members of Omnitrans’ Senior Leadership Team to amend contract HR12-04 with Occlink to remove oversight services from the scope of work*

*should the Board accept the recommendation to award contract HR13-182 to Pacific Claims Management.*

*Further, the Panel found that per the terms and conditions of RFP-HR11-8, Sections 5-6, included as part of the agreement with York, Omnitrans has the unilateral right to exercise options, but is under no obligation to do so.*

2. York contends that the grounds upon which the RFP process was initiated were flawed as a financially interested party was included in the review process that led to the RFP, which resulted in an award to an affiliate of the financially interested party.

*Response:*

*The Panel found no evidence to support this allegation. The decision to issue RFP-HR13-182 was made by the Omnitrans senior leadership team and was exclusively based on increased costs and escalating actuarial.*

3. York contends that Pacific Claims Management, through Occlink, had an unfair advantage by consulting privately with Omnitrans about York's work with exposure to neither comments nor the ability to defend any criticism of York. Through its affiliate, Occlink, Pacific Claims Management had continuous access to all claims files through incumbent York's claims system. Lastly, Pacific Claims Management through Occlink had an unfair advantage by having access to private information regarding pricing.

*Response:*

*All relevant information necessary to develop a technical approach/methodology was made available to all interested parties in the RFP-HR13-182, Attachment A, Scope of Work, and subsequent addendums. Proposals submitted by Keenan and Intercare both ranked higher than York. Therefore, the Panel did not find any evidence of an unfair advantage.*

4. Finally, York contends that the entire evaluation process was tainted from the time Occlink and Jerry Laval began auditing and reviewing York's files.

*Response:*

*It is a fundamental principle of public agencies to evaluate proposals against the criteria stated in the solicitation and not outside influences. The Panel verified that all proposals submitted in response to RFP-HR13-182 were evaluated exclusively by Omnitrans' staff.*

#### Outcome and Recommendation

In conclusion, York has not presented sufficient evidence to substantiate its claim that Omnitrans violated purchasing procedures. As a result, the Panel upholds the recommendation to award contract HR13-182 to Pacific Claims Management.

## **Broughton Construction, Inc. (BCI)**

### **Grounds for Protest**

The purpose of this review was to evaluate the release, information, and selection process of IFB SAS12-17R2, for installation of an emergency diesel generator and construction of a block wall enclosure. HCI was selected as low bidder because the apparent low bidder BCI was deemed unresponsive because they failed to produce the appropriate bid bond or cashier check as instructed.

#### *Response:*

*A review was made of Section II Instruction to Bidding Forms, which stated “The bidder shall complete all forms and submit the documentation identified below (referring to A, B, C, D, E, F, G, and H). The bid may not contain exceptions to or deviations from requirements of this IFB (referring to Section I, J). Scan and attach the required documents listed and checked below in your eBid (referring to the forms below the comments, not the check or Bid Bond). No comments in Section II are inconsistent with the expectations that the Bid Bond or a cashier check for not less than 10% should be presented before the deadline of the bid.*

### **Outcome and Recommendation**

BCI was fairly deemed unresponsive and the award made to the next responsive bidder HCI. There were not any justifiable reasons to overturn Omnitrans’ procurement decision.

## **Environmental Equipment Supply (EES)**

### **Grounds for Protest**

The letter of protest stated that EES was protesting bid IFB-MNT14-01 INDUSTRIAL CHEMICAL and the determination that your company was deemed non-responsive. The understanding was that the bid was determined to be non-responsive because EES failed to submit Tech Data Sheets. EES indicated that the failure to submit Tech Data Sheets was based on the perception that this information would be required from the low bidder when samples and test trials began.

#### *Response:*

*After review of the bid package and addendum number 2, it is the opinion of the review panel that the information was very explicit that the manufacturers’ tech data sheet for all chemical types and manufacturers’ tech data sheets for all dispenser types, were required as part of the bid. Therefore, failure to provide the requested information with the bid would be cause to be considered as non-responsive.*

### Outcome and Recommendation

Environmental Equipment Supply has not presented sufficient evidence to substantiate its claim that the failure to produce the requested documentation was not grounds to be deemed non-responsive. As a result, the review panel upholds the Procurement department's recommendation to deem EES non-responsive to bid IFB-MNT-14-01.

### **Epic Pest Control & Landscape**

#### Grounds for Protest

The letter of protest stated that Epic was protesting bid IFB-MNT14-13 Landscaping Services, based on the premise that R.P. Landscape & Irrigation should be deemed non-responsive, because they lack the proper licenses.

#### *Response:*

*After review of the bid package and the State of California Pesticide regulation, it is determined that the work being performed would be covered under the Maintenance Gardener Pest Control Business License, and requires a QAC B, which is in compliance with California requirements. It is the opinion of the review panel that R.P. Landscape & Irrigation possesses the proper licenses required to fulfill the requirements of this contract.*

### Outcome and Recommendation

Epic Pest Control & Landscape Services, Inc. has not presented sufficient evidence to substantiate its claim R.P. Landscape & Irrigation is deficient regarding licenses. As a result, the review panel upholds the Procurement department's recommendation to recommend award of contract MNT14-13 to R. P. Landscape and Irrigation.

### **Quality Assurance Audit**

A comprehensive quality program was written to administer quality control to the construction phase of the sbX project. The QA Manager will conduct onsite quality audits and report the results monthly. DIAS will monitor the QA activities which will include periodic site visits.

### Resource Allocation

The Quality Assurance (QA) Manager Tim Chowdhury was on leave for more than 50% of this period. The QA work was supported by Hector Rojas and increased field work by Samuel Gibbs. The activities included site visits, document audits, and reviews of the field inspection sheets. Additionally, the Project Management Oversight Contractor (PMOC) conducted a comprehensive review of the Agency's and Jacobs' QA process.

### Outcome and Recommendation

The QA process was strained due to Tim Chowdhury's medical leaves. Adjustments were made to address the required fieldwork, as a result the basic QA requirements were met, and the PMOC review did not reveal any areas of deficiency. The project is nearing completion and additional time is required to monitor the QA activities. The QA Manager reports to the Internal Audit Department.

### **Preparation for the Triennial Review**

A part of the Internal Audit Department's responsibility is to ensure that the Agency is prepared for external audits. During the months of July, August, September, and October the pre-work for the Agency's upcoming triennial review was completed; this review is scheduled for early January 2014. The pre-work required overseeing the collection of documents and information by each department in the Agency. Once all the information was collected, it had to be compiled into a report format and forwarded to the consultant team who will be conducting the site visit. The information that was gathered was very comprehensive, because it covered every area of the Agency's operations.

### **Succession Planning**

The Agency is tasked with developing a comprehensive succession plan that includes elements of performance management, employee development, and mentoring. The success of these initiatives is reliant on the full participation of each department director and their management staff.

### Resource Allocation

Omnitrans received a workforce development grant in July 2013 for \$340,000.00. This grant is to help the region introduce individuals to the opportunities in transit. A committee was formed to explore the potential options. The programs being proposed are a refined hiring process for coach operators, an internship program, and a program to help employees advance their careers.

### **SAP and IT**

Conduct audits to review license and security levels on the network. An additional review will be performed addressing the safeguard of confidential information. An audit will be performed to measure the effectiveness of SAP implementations. Internal Audit will look into contracting an IT auditor and billing it to the SAP contract. Additionally, the help desk and other portions of the IT department have been outsourced since July 7, 2010. The proposed engagements with IT will include the monitoring of IT security such as passwords, security levels, and delegations of duties (no one IT employee should have exclusive access to all levels of the IT infrastructure). Additionally, in FY 2014, emphasis will be placed on implementing a management dashboard,

Capability Maturity Model Integration (CMMI) process improvement, and a project proposal and management system. Some of the responsibilities for IT monitoring might be delegated to consultants or contract help.

#### Resource Allocation

Resources have been allocated to assist with improving SAP system stability. The Internal Audit Department led the charge to improve system reliability during the landscape review conducted by SAP in April 2013. There are still opportunities for knowledge sharing, ongoing system support, and continued training.

#### **Non Quality Related sbX assessments**

In addition to overseeing the QA process for the sbX project, the Internal Audit Department is involved in other aspects of the sbX planning. These responsibilities are part of safeguarding Agency assets as outlined in the audit charter approved by the Board of Directors on January 9, 2008. The involvement includes but is not limited to safety, security, asset management, maintenance and operations, test and commission, and ridership forecasts.

ITEM # E7

**DATE:** March 5, 2014

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

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

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

**SUBJECT: OMNITRANS' FISCAL YEAR ENDED JUNE 30, 2013 AUDIT REPORTS**

**FORM MOTION**

Receive and file the following audit reports for Fiscal Year ended June 30, 2013:

- Annual National Transit Database Reporting (NTD)
- Statement of Auditing Standards Letter (SAS 114)
- Generally Accepted Government Auditing Standards (GAGAS) Report
- Transportation Development Act (TDA) and Single Audit Reports
- Proposition 1B Report
- Comprehensive Annual Financial Report

*This item was reviewed by the Administrative and Finance Committee at its February 10, 2014, meeting, and recommended to the Board of Directors for receipt and file.*

**BACKGROUND**

As a recipient of federal, state, and local funding, Omnitrans is required to have an annual audit conducted by independent auditors in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States. The audit also included fifteen tasks contained in San Bernardino Associated Governments (SANBAG) Transportation Development Act 2005 Compliance Guide.

- The NTD was established by Congress to be the Nation's primary source for information and statistics on the transit systems of the United States. Recipients or beneficiaries of grants from the Federal Transit Administration (FTA) under the [Urbanized Area Formula Program](#) (§5307) or [Other than Urbanized Area \(Rural\) Formula Program](#) (§5311) are required by statute to submit data to the NTD.
- The SAS 114 letter establishes standards and provides guidance on the auditor's communication with those charged with governance in relation to an audit of financial statements. The standards and guidance applies regardless of an entity's governance structure

or size. Particular considerations apply where all of those charged with governance are involved in managing an entity. *Those charged with governance* means the person(s) with responsibility for overseeing the strategic direction of the entity and obligations related to the accountability of the entity. This includes overseeing the financial reporting process. For entities with a Board of Directors, this term encompasses the term *Board of Directors* or *Audit Committee* used elsewhere in generally accepted auditing standards.

- The GAGAS Report establishes reporting standards and provides guidance for financial audits conducted in accordance with generally accepted government auditing standards (GAGAS). For financial audits, GAGAS incorporates the American Institute of Certified Public Accountants (AICPA) field work and reporting standards and the related statements on auditing standards (SAS).
- The TDA report is a requirement by California Code of Regulations, Title 21, sections 6661 and 6751. Local Transportation Fund and State Transit Assistance Fund recipients must submit a fiscal audit report to the State Controller's Office annually and within 180 days after the end of the fiscal year. The audit report shall be conducted in accordance with generally accepted auditing standards and include a compliance certification with the TDA.

Each year, the Federal Government provides over \$400 billion in grants to State, local and tribal governments, colleges, universities and other non-profit organizations (non-Federal entities). The Single Audit Act of 1984 (with amendment in 1996) and OMB Circular A-133 ("Audits of State, Local Governments, and Non-Profit Organizations") provide audit requirements for ensuring that these funds are expended properly.

- The Public Transportation Modernization, Improvement, and Service Enhancement Account Program (PTMISEA) was created by Proposition 1B, the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006. Of the \$19.9 billion available to Transportation, \$3.6 billion dollars was allocated to PTMISEA to be available to transit operators over a ten-year period. PTMISEA funds may be used for transit rehabilitation, safety or modernization improvements, capital service enhancements or expansions, new capital projects, bus rapid transit improvements, or rolling stock (buses and rail cars) procurement, rehabilitation or replacement.
- The financial statements for fiscal year ended June 30, 2013 are presented in the Comprehensive Annual Financial Report (CAFR) along with comparative financial information for the year ended June 30, 2012. The audit expresses a professional opinion as to whether the financial statement prepared by management with the Board of Directors' oversight are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles. Since fiscal year 2005, Omnitrans has received an "unqualified opinion" on its financial statements.

A Comprehensive Annual Financial Report for FY2013 will be submitted to the Government Finance Officers Association (GFOA) for a Certificate of Achievement for Excellence in Financial Reporting. The Certificate of Achievement is the highest form of recognition in governmental accounting and financial reporting, and its attainment represents a significant

accomplishment by an Agency and its management. Omnitrans was awarded a Certificate of Achievement for it FY1998, FY1999, FY2000, FY2006, FY2007, FY2008, FY2009, FY2010, FY2011, and FY2012 CAFRs.

PSG:DW

ITEM # E8

**DATE:** March 5, 2014

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

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

**FROM:** Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE AWARD – CONTRACT PLN13-198  
RUBEN CAMPOS PARK BUS STOP IMPROVEMENT**

**FORM MOTION**

Authorize the CEO/General Manager to award Contract No. PLN13-198 to David Evans and Associates of Ontario, CA, for the provision of Architectural and Engineering Services for the Ruben Campos Park Bus Stop Improvement Project in the amount of \$50,025, plus a 10% contingency of \$5,002 for a total not-to-exceed amount of \$55,027.

**BACKGROUND**

On November 14, 2013, Omnitrans posted Request for Qualifications (RFQ<sub>u</sub>) on Omnitrans' online bidding system. The solicitation required the Architectural and Engineering firm to complete the bid documents and work plan for the bus stop improvement, including bus turnout, sidewalk and curb reconstruction, utilities, shelter relocation, tree relocation and landscaping. Two responses to the RFQ<sub>u</sub> were received electronically by the deadline of January 2, 2014. One bid was found to be responsive.

Staff evaluated the response based on specialized experience, past performance on contracts with government agencies, professional qualifications, capacity to accomplish the work, and location in the general geographic area, and knowledge of the locality of the project. In accordance with the Mini Brooks Act, staff requested and negotiated pricing after the evaluation resulting in a savings of \$8,970.

David Evans and Associates is a full service, professional consulting firm specializing in civil engineering, landscape architecture, surveying, and transportation and transit planning. The firm has been involved in numerous projects, many of which have been in San Bernardino County. Price is deemed fair and reasonable as the bid is within 10% of the Independent Cost Estimate of \$50,000.

Award is recommended to the most qualified firm.

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

### **FUNDING SOURCE**

Funding for this contract is budgeted as follows:

<b>FUNDING</b>	<b>GRANT #</b>	<b>YEAR</b>	<b>PROJECT NAME</b>	<b>INTERNAL ORDER</b>	<b>AMOUNT</b>
Prop 1B	Prop 1B 2008	2008	RUBEN CAMPOS	C081B101P	\$55,027

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

### **CONCLUSION**

Award of this contract will allow Omnitrans to move forward with the planning, development and improvements of the Ruben Campos Bus Stop Improvement Project.

PSG:JMS:AA



## CONTRACT AGREEMENT

between

### CONTRACTOR

David Evans and Associates, Inc.  
4200 Concourses, Suite 200  
Ontario, CA 91764

(hereinafter "CONTRACTOR")

Telephone: 909-481-5750

Fax: 909-481-5757

Email: drb@deainc.com

And

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

### CONTRACT DOCUMENTS

**CONTRACT NO.**

**PLN13-198**

**RUBEN CAMPOS PARK BUS  
STOP IMPROVEMENT**

Contract Amount:

not to exceed \$50,025

Omnitrans Project Manager:

Name: Anna Rahtz

Title: Interim Director of Planning

Telephone: 909-379-7256

Fax: 909-379-7258

Email: anna.rahtz@omnitrans.org

Contract Administrator:

Name: Alesia Atkinson

Title: Contract Administrator

Telephone: 909-379-7314

Fax: 909-379-7107

Email: alesia.atkinson@omnitrans.org



## TABLE OF CONTENTS

1.	SCOPE OF WORK.....	4
2.	PERIOD OF PERFORMANCE.....	4
3.	CONTRACT SUM.....	4
4.	INVOICING AND PAYMENT.....	5
5.	AUDIT AND INSPECTION OF RECORDS.....	6
6.	NOTIFICATION .....	6
7.	OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES.....	6
8.	TERMINATION FOR CONVENIENCE .....	8
9.	TERMINATION FOR BREACH OF AGREEMENT .....	8
10.	ASSIGNMENT .....	9
11.	SUBCONTRACTING.....	9
12.	INDEPENDENT CONTRACTOR.....	10
13.	INSURANCE .....	10
14.	INDEMNITY.....	10
15.	REVISIONS IN SCOPE OF WORK.....	11
16.	RIGHTS IN TECHNICAL DATA .....	11
17.	OWNERSHIP OF REPORTS AND DOCUMENTS.....	11
18.	OWNERSHIP RIGHTS.....	12
19.	WORK FOR HIRE .....	12
20.	SUBMITTAL OF CLAIMS BY CONTRACTOR.....	13

21.	EQUAL OPPORTUNITY.....	13
23.	NOTIFICATION OF EMPLOYMENT OF OMNITRANS BOARD MEMBERS/ALTERNATES AND EMPLOYEES .....	14
24.	DISQUALIFYING POLITICAL CONTRIBUTIONS .....	14
25.	COMPLIANCE WITH LAW .....	14
26.	COMPLIANCE WITH LOBBYING POLICIES .....	14
27.	PUBLIC RECORDS ACT .....	15
28.	WAIVER/INVALIDITY .....	15
29.	FORCE MAJEURE.....	15
30.	CONFIDENTIALITY .....	16
31.	CONTRACTOR’S INTERACTION WITH THE MEDIA AND THE PUBLIC .....	16
32.	GOVERNING LAW .....	16
33.	MODIFICATIONS TO AGREEMENT .....	16
34.	PRECEDENCE .....	17
35.	ENTIRE AGREEMENT .....	17

ATTACHMENT A – SCOPE OF WORK

ATTACHMENT B – COST FILE

This Agreement is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2014 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and \_\_\_\_\_ David Evans and Associates, Inc., \_\_\_\_\_ (hereinafter referred to as "CONTRACTOR").

## **RECITALS**

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

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

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

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

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

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

The period of performance shall be no longer than nine (9) months from the date of the notice to proceed, pursuant to the provisions of this Agreement, or unless earlier terminated pursuant to Section 8 or Section 9 of this Agreement.

### **3. CONTRACT SUM**

For CONTRACTOR's full and complete performance of its obligations under this Agreement, OMNITRANS shall pay CONTRACTOR on a FIRM FIXED UNIT PRICE basis at the fully burdened fixed rates shown in Attachment B, Fee Schedule, plus reimbursement of any direct costs agreed to in accordance with

the provisions of this Section, and subject to the maximum cumulative payment obligation.

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Fifty Thousand Twenty Five Dollars and 00/100 Dollars (\$ 50,025. ), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

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

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

CONTRACTOR shall submit invoices in duplicate to:

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

Each invoice shall include, at minimum, the following information:

- Contract number
  - Detail description of the Work rendered
  - Time period covered by the invoice
  - Amount of payment requested
  - Information as requested by OMNITRANS
- B. OMNITRANS shall remit payment within thirty (30) calendar days of approval of the invoices by OMNITRANS' Project Manager.

At its sole discretion, OMNITRANS may decline to make full payment for any Work until such time as CONTRACTOR has documented, to OMNITRANS' satisfaction, that CONTRACTOR has fully completed all required Work.

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

Agreement or any other Agreement between OMNITRANS and CONTRACTOR.

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

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

## **6. NOTIFICATION**

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

To OMNITRANS:

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

To CONTRACTOR:

David Evans and Associates, Inc.  
4200 Concourses, Ste 200  
Ontario, CA 91764  
Attn: Rob Bathke, Project Manager

## **7. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES**

### **A. OMNITRANS' Project Manager**

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

Project Manager: Anna Rahtz, Interim Director of Planning

- a. OMNITRANS has the final approval in all matters relating to or affecting the Work. 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>Rob Bathke,</u>	<u>Project Manager, Workshop Facilitation</u>
<u>Kim S. Rhodes, Almabeth Anderson and Jon S. Oen</u>	<u>Landscape Architecture/Irrigation Design</u>
<u>Bryan Lirley and Alex Ramirez</u>	<u>Civil Engineering</u>
<u>Bob Vasquez</u>	<u>Survey</u>
<u>Rob Bathke and Ted Young</u>	<u>Construction Management</u>
<u>Hasmi S. Quazi</u>	<u>Geotechnical Engineering</u>

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

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

## **8. TERMINATION FOR CONVENIENCE**

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

## **9. TERMINATION FOR BREACH OF AGREEMENT**

- A. If CONTRACTOR fails to perform any of the provisions of this Agreement or so fails to make progress as to endanger timely performance of this Agreement, OMNITRANS may give CONTRACTOR written notice of such default. If CONTRACTOR does not cure such default or provide a plan to cure such default which is acceptable to OMNITRANS within the time permitted by OMNITRANS, then OMNITRANS may terminate this Agreement due to CONTRACTOR's breach of this Agreement.
- B. If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then OMNITRANS may immediately terminate this Agreement.
- C. If CONTRACTOR violates Section 26, Compliance with Lobbying Policies, of this Agreement, then OMNITRANS may immediately terminate this Agreement.
- D. In the event OMNITRANS terminates this Agreement as provided in this Section, OMNITRANS may procure, upon such terms and in such manner as OMNITRANS may deem appropriate, Work similar in scope and level of effort to those so terminated, and CONTRACTOR shall be liable to OMNITRANS for all of its costs and damages, including, but not limited, any excess costs for such Work.

- E. All finished or unfinished documents and materials produced or procured under this Agreement shall become OMNITRANS' property upon date of such termination.
- F. If, after notice of termination of this Agreement under the provisions of this Section, it is determined for any reason that CONTRACTOR was not in default under the provisions of this Section, or that the default was excusable under the terms of this Agreement, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 8, Termination for Convenience.
- G. The rights and remedies of OMNITRANS provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

## 10. ASSIGNMENT

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

## 11. SUBCONTRACTING

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

Subcontractor's Name and Address	Work to Be Performed
Converse Consultants 10391 Corporate Drive Redlands, CA 92374	Geotechnical and Environmental Srv.

## 12. INDEPENDENT CONTRACTOR

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

## 13. INSURANCE

Throughout the duration of this Agreement, CONTRACTOR shall maintain the following insurance, 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. **Errors and Omissions Liability:** \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$3,000,000 aggregate or,
- E. **Professional Liability:** \$1,000,000; per occurrence and aggregate.
- F. **Employer's Liability:** \$1,000,000; per occurrence  
Additional Insured:

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

## 14. INDEMNITY

CONTRACTOR shall indemnify, defend and hold harmless OMNITRANS, and its member agencies, and their officers, directors, employees and agents from and

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

## **15. REVISIONS IN SCOPE OF WORK**

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

## **16. RIGHTS IN TECHNICAL DATA**

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

## **17. OWNERSHIP OF REPORTS AND DOCUMENTS**

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

## **18. OWNERSHIP RIGHTS**

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

## **19. WORK FOR HIRE**

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

## **20. SUBMITTAL OF CLAIMS BY CONTRACTOR**

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

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

## **21. EQUAL OPPORTUNITY**

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

## **22. STANDARD OF PERFORMANCE**

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

**23. NOTIFICATION OF EMPLOYMENT OF OMNITRANS BOARD MEMBERS/ALTERNATES AND EMPLOYEES**

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

**24. DISQUALIFYING POLITICAL CONTRIBUTIONS**

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

**25. COMPLIANCE WITH LAW**

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

**26. COMPLIANCE WITH LOBBYING POLICIES**

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

## **27. PUBLIC RECORDS ACT**

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

## **28. WAIVER/INVALIDITY**

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

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

## **29. FORCE MAJEURE**

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

### **30. CONFIDENTIALITY**

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

### **31. CONTRACTOR'S INTERACTION WITH THE MEDIA AND THE PUBLIC**

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

### **32. GOVERNING LAW**

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

### **33. MODIFICATIONS TO AGREEMENT**

Unless specified otherwise in the Agreement, this Agreement may only be modified by written mutual consent evidenced by signatures of representatives

authorized to enter into and modify the Agreement. In order to be effective, amendments may require prior approval by OMNITRANS' Board of Directors, and in all instances require prior signature of an authorized representative of OMNITRANS.

**34. PRECEDENCE**

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, (2) Attachment A, Scope of Work, (3) Attachment B, Cost File (4) provisions of RFQu No. PLN13-198 and (5) CONTRACTOR's proposal dated December 20, 2013

**35. 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

DAVID EVANS AND ASSOCIATES, INC.

\_\_\_\_\_  
P. SCOTT GRAHAM  
CEO/GENERAL MANAGER

\_\_\_\_\_  
ROB BATHKE, PE, QSD  
PROJECT MANAGER

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Federal Tax I.D. No. 93-0661195

DP \_\_\_\_\_

CM \_\_\_\_\_

## A&amp;E SERVICES – RUBEN CAMPOS PARK BUS STOP IMPROVEMENTS

**Attachment A**  
**SCOPE OF WORK / DELIVERABLES**

<b><u>Acronym</u></b>	<b><u>Definition</u></b>
A&E	Architectural and Engineering
ACI	American Concrete Institute
ADA	Americans with Disabilities Act
AISC	American Institute of Steel Construction
API	American Petroleum Institute
ASTM	American Society for Testing and Materials
BMP	Best Management Practices
CADD	Computer-aided drafting and design
CEO	Chief Executive Officer
CEQA	California Environmental Quality Act
CUD	Contract Unit Descriptions
DCL	Document Control Log
FD	Final Design
FHWA	Federal Highway Administration
FTA	Federal Transit Administration
IEEE	Institute of Electrical and Electronics Engineers
MUTCD	Manual on Uniform Traffic Control Devices
NEC	National Electrical Code
NPDES	National Pollutant Discharge Elimination System
NTP	Notice to Proceed
PE	Preliminary Engineering
PM	Project Manager
RFC	Requests for Change
RFI	Requests for Information
RWQCB	Regional Water Quality Control Board
SDC	Services During Construction
SWPPP	Stormwater Pollution Prevention Plan
TO	Task Order
VE	Value Engineering

## A&amp;E SERVICES – RUBEN CAMPOS PARK BUS STOP IMPROVEMENTS

**1. PROJECT SCOPE**

- A. The scope of the engineering design services will include the initial project scoping, field and utility surveys, in addition to mapping of project boundary and right-of-way boundaries.
- B. The Firm will be available to:
  - 1. Prepare, schedule, and conduct one (1) design workshop with stakeholders (i.e., Omnitrans, City of San Bernardino, Caltrans, utility companies, and others as deemed necessary by Omnitrans Project Manager), which will include a presentation of the project schedule and informal project management. Participate in one (1) other stakeholder meeting/public information session, if deemed necessary by Omnitrans Project Manager (Omnitrans staff will coordinate with stakeholders, coordinate meeting location, send out meeting invitations, etc.);
  - 3. Bi-weekly status updates (meetings or conference calls);
  - 4. Meeting coordination, including the preparation of agendas and meeting notes (not less than 24 hour prior to meeting);
  - 5. Submittal of monthly progress reports, with schedule updates, along with monthly invoices with breakdown of labor and indirect expenses;
- C. The project is for engineering design services for the Ruben Campos Park Bus Stop Improvement Project, located at Omnitrans' eastbound Route 14 bus stop on the south side of 5<sup>th</sup> Street east of Medical Center Drive, in San Bernardino, CA. (See attached Project Location Map). Project includes the following components:
  - 1. Construction of bus turnout, including reinforced concrete bus pad, reconstruction of curb and gutter, and pavement replacement in lane adjacent to turnout;
  - 2. Extension of sidewalk along frontage of Ruben Campos Park on south side of 5th Street and other connecting sidewalk as needed to comply with the Americans with Disabilities Act;
  - 3. Relocation of existing trees and addition of new landscaping on south side of 5th Street adjacent to bus turnout and in front of Ruben Campos Park (as allowable within project budget);
  - 4. Relocation of existing bus shelter and amenities, as needed;
- D. The Firm will be responsible for the following:
  - 1. The preparation and revision of concept and plan drawings;
  - 2. Review of Omnitrans' Transit Design Guidelines at <http://www.omnitrans.org/about/reports/>, to ensure consistency of project plans with guidelines;
  - 3. Review application of all applicable laws and regulations to ensure that plans are compliant;

## A&amp;E SERVICES – RUBEN CAMPOS PARK BUS STOP IMPROVEMENTS

4. Coordination of all required permits, including City, Caltrans as needed, and CEQA requirements as needed;
  5. Development of preliminary and final cost estimates;
  6. Preparation of all plans required for permitting (i.e. Water Quality Management Plan, Stormwater Pollution Plan, Traffic Impact Analysis, etc.
- E. The Firm will prepare complete bid, Independent Cost Estimate (ICE) including construction documents, plans, and specifications, and landscape and irrigation plans in two paper sets and two disk sets of all project materials (pdf final plans, editable electronic plans, documentations of meetings, and correspondence).
- F. All improvements must meet ADA requirements.

## 2. PROJECT PHASES AND SCOPE DETAILS

- A. The Project from design, construction, to startup shall be carried out in the following phases and the effort of this RFQ<sub>u</sub> is for A&E services in all phases in whole as defined below:
- 1) Phase 1/Task Order 1 (Fixed Price Bid)  
 Project Development (A&E Consultant)
    - a) Pre-Design
    - b) Design
      - b.1 Preliminary Engineering
      - b.2 Final Design
  - 2) Phase 2/Task Order 2 (Time and Materials Not-To-Exceed Bid)  
 A& E Service During Construction
  - 3) Optional Task Order 3 (Time and Materials Not-To-Exceed Bid)  
 Environmental Investigation and recommendations, if necessary
- B. A&E Services are divided into three phases. Phase 1 is Project Development including minor phases of Pre-Design, Preliminary Engineering (PE), and Final Design (FD). Phase 2 is for the project's engineering support services during construction of the project. Phase 3 is optional under this RFQ<sub>u</sub> and services include environmental investigation and remediation recommendations of existing facilities to be modified or demolished defined in the scope of work. Additional details are provided in the following sections.

## 3. Phase 1/Task Order 1: Project Development

- A. Upon receipt of NTP for Task Order 1, the Firm shall furnish all services, management, materials and related items and perform all operations necessary to satisfactorily carry out the engineering services per the contract requirements including, but not limited to, the requirements for project management, project

A&E SERVICES – RUBEN CAMPOS PARK BUS STOP IMPROVEMENTS

administration, contract administration, CADD services, quality assurance, and project control during each engineering phase.

- B. The Firm shall review its design for compatibility with Omnitrans' existing systems affected by the project, and from the perspective of minimizing operating and maintenance costs, minimizing impacts to the environment and community, constructability (the consideration of construction methods and being sure that what is proposed can be built using common construction methods, especially considering the need to maintain street/roadway traffic and provide a safe working environment for contractors), compliance with state and local design requirements (for example, the Americans with Disabilities Act (ADA)), cost-effectiveness, and consistency with design criteria. Completion of Phase 1 shall result in final, stamped construction drawings, specifications, and a certified engineer's estimate.

**4. PRE-DESIGN**

- A. Prepare, schedule, and conduct one (1) design workshop with stakeholders (i.e., Omnitrans, City of San Bernardino, Caltrans, utility companies, and others as deemed necessary by Omnitrans Project Manager), which will include a presentation of the project schedule and informal project management plan.
- B. Participate in one (1) other stakeholder meeting/public information session, if deemed necessary by Omnitrans Project Manager. (Omnitrans staff will coordinate with stakeholders, coordinate meeting location, send out meeting invitations, etc.)
- C. The Firm shall evaluate and determine if the conceptual design is a workable solution or propose a more cost-effective design as part of the Pre-Design process. The intent of the design workshops is to clearly define the initial set of design criteria from the stakeholders and obtain answers and decisions to any unclear design issues prior to proceeding with PE.

**1. DESIGN CRITERIA AND STANDARDS**

The Firm shall develop Design Criteria and Standards for the project to include at a minimum the following prior to the start of Preliminary Engineering:

- i. Identify design criteria and standards for civil, drainage, lighting, signage, striping, utilities, safety and security.
- ii. Review and identify design standards including but not limited to City of San Bernardino, County of San Bernardino, utility companies, and any other governmental or regulatory agencies and owners affected by the project.
- iii. Obtain approval for the established design criteria and standards to be used for the project from Omnitrans including approval of deviations and waivers.

## A&amp;E SERVICES – RUBEN CAMPOS PARK BUS STOP IMPROVEMENTS

## 2. ENVIRONMENTAL REQUIREMENTS

Complete the environmental investigation necessary to determine the level of requirements to comply with CEQA, if applicable.

## 5. DESIGN – PRELIMINARY ENGINEERING

- A. The Firm shall develop the scope of work detailed in the RFQ.
- B. Provide preliminary plan including work flow process, functional layout, utility connections, lighting, structural materials and other details. Show how design integrates into adjacent community and how design features mitigate impacts of the facility.
- C. Produce preliminary design drawings including plans, sections, to support the plan and profile drawings and to form basis for preliminary capital cost estimates and design/bid/build contract documents. Once PE is reviewed and approved, PE shall be the basis to complete FD to 100%.

## 1) PRELIMINARY ENGINEERING (PE):

- a) Upon authorization, the Firm shall advance the conceptual engineering completed to date and develop PE. The Firm shall update the Design Criteria and other standard technical documents as required. Perform all required work to produce drawings, specifications, technical and other reports to complete the project's PE. During PE, the Firm shall continue to refine the design to 30% completion. The PE portion of the total design effort must permit the Project to move rapidly through Final Design with a minimum of design changes, disruptions, or delays. The goal of PE is to complete the design to a point where there is a consensus among stakeholders in the scope of the project, so that the scope can be "frozen" and not changed during Final Design.
- b) Provide a list of designer responses to all client and stakeholder (Omnitrans, City, utility company, etc.) comments on design, including how the comments were addressed.
- c) The Firm shall perform preliminary engineering design to a level and extent necessary to satisfy at least the following:
  - i. Resolves all substantial design issues and environmental/third party impacts and mitigations, if applicable;
  - ii. Defines the Project scope and construction sequences;
  - iii. PE level cost estimate and PE level project schedule including proposed construction schedule;
  - iv. Identifies the right of way to establish the Project "footprint"; and

A&E SERVICES – RUBEN CAMPOS PARK BUS STOP IMPROVEMENTS

v. Defines functional and operating characteristics.

2) STANDARD SPECIFICATIONS

Assemble the standard contract technical specifications and performance specifications. Produce Standard Technical Specifications and Performance Specifications reflecting the verified and updated specs for Omnitrans review and approval.

3) APPLICABLE STANDARDS

- a) The engineering design for this project shall be done in accordance with all local, county, state, federal, and industry standards, rules and regulations as applicable. The following standards apply:
  - i. Manual on Uniform Traffic Control Devices (MUTCD)
  - ii. Public Works – Standard Drawings, City of San Bernardino
  - iii. Standard Specifications and Plans, County of San Bernardino
  - iv. Greenbook Standard Specifications for Public Works, American Public Works Association
- b) The current standards of IEEE, API, ASTM, ACI, AISC, NEC, FTA, FHWA, Corps of Engineers, San Bernardino County Flood Control District, SANBAG, City of San Bernardino, San Bernardino County, utility companies, and other local entities may be applicable.

4) TOPOGRAPHIC SITE SURVEYS

Conduct topographic site surveys of the areas of interest, producing topographic mapping showing terrain features, contours, spot elevations, and the like. This work includes, but is not limited to, determination of details such as location of trees, curb cuts, lighting, adjacent building and parking, curb joint elevations, back of sidewalk elevations, pavement joint elevations, grading limits, modifications to existing slopes, drainage system, limits of construction, critical building and other structure offsets; and property limits. Topography survey shall show trees and all relevant site features.

5) UTILITY SURVEYS AND COMPILATION MAPS

- a) Apply topographic surveying techniques to record the presence of existing utility lines and structures. The Firm shall collect pertinent record drawings from city, county, and utility owner's maps and records, conduct field surveys to locate and verify existing underground and overhead utilities. Recognize that existing utilities that might impact the design of the Project include storm drainage (pipes and channels), sanitary sewers, gas lines and valve boxes, petroleum product pipelines, water mains and valves, power lines, poles, duct banks and vaults, steam pipelines and

## A&amp;E SERVICES – RUBEN CAMPOS PARK BUS STOP IMPROVEMENTS

communications systems both underground and overhead (telephone, telegraph, alarm systems, cable transmission systems, fiber optics.)

- b) Locate such utility facilities by standard field survey methods and if necessary, utilize electronic equipment such as ground penetrating radar. Potholing for location verification may be accomplished, as needed, by the Firm, with involvement from Omnitrans. The Firm shall perform the research of utility companies and other agencies for records necessary to secure all of the information, clearances, and/or plan review services required for identifying, locating, and accurately laying out all of the underground facilities. Underground Service Alert of Southern California must be contacted 48 hours prior to the scheduled fieldwork.
- c) The Firm shall be responsible for obtaining and complying with required Permits, preparing Storm Water Pollution Prevention Plans, and restoring the areas where the potholing is performed. If a proposed pothole is in an area suspected to contain contaminated soils and/or groundwater, the Firm shall prepare a task specific Health and Safety Plan. As the Firm is performing the utility potholing, they shall look for signs of contamination, such as discolored soil or odors, and send samples for testing.
- d) Prepare and submit a set of utility compilation maps showing the array of existing utility lines and facilities at a suitable scale, of 1" = 10', 1" = 20', or the selected base map scale, depending on the density of lines and the need for clarity. Identify each utility by owner, type, size, and location using a separate matrix array keyed to the map set.

#### 6) BASE MAP DEVELOPMENT

Produce final design quality base maps using an appropriate blending of control surveys and topographic surveys and plotting. These design base maps shall be at a scale of 1" = 40' unless otherwise required by the City or stakeholders. Where more details are required, base map insets or site plans shall be at scales of 1" = 10' or 1" = 20'.

#### 7) GEOTECHNICAL INVESTIGATIONS

- a) The Firm shall collect and review previously completed geotechnical reports for the area, including, but not limited to, reports prepared by/for the City of San Bernardino. The Firm shall be responsible for all work required to obtain and comply with all permits necessary to carry out the Geotechnical Work Plan including, but not limited to, boring permits, excavation permits, and Storm Water Pollution Prevention Plans (SWPPPs).

## A&amp;E SERVICES – RUBEN CAMPOS PARK BUS STOP IMPROVEMENTS

- b) The Firm shall recommend preliminary design values for the pavement and soil/structure interfaces and the limits of over-excavation and recompaction.

8) **CONTAMINATED SOIL OR GROUNDWATER**

In conjunction with Geotechnical Investigations, provide engineering support to Omnitrans for soil and groundwater (if encountered) tests and analysis; identification of soil contamination; recommendation of methods of handling contamination if encountered during field investigation. If contaminated soil or groundwater is found, provide a scope of work to determine the extent of the contamination, remedial alternatives, lead government agency cleanup requirements, cost and schedule impacts as Optional Task Order 36. Omnitrans and Firm shall negotiate a scope and budget for a change order to perform this work.

9) **HAZARDOUS SUBSTANCE IDENTIFICATION**

In conjunction with the preliminary geotechnical investigations and to the extent necessary, test for the presence of chemical contamination such as arsenic, lead, fuels, crude oil, metal, pesticide/herbicide residues and petroleum oil and lubricants. Incorporate the findings of this subtask in the geotechnical report. The Firm shall provide Phase 2, page 35, which can be performed during the geotechnical investigation. Firm shall prepare a work plan on how Firm shall proceed with Phase 2 work prior to commencement of field activities.

10) **PERMITS**

- a) The Firm shall assist Omnitrans in determining the type of permits that may be required from various agencies before the Project can be approved for construction. These permits often require mitigation. It is essential that potential permits be identified at the earliest stage, along with an estimate of the cost for mitigation, if needed. In addition, support Omnitrans by identifying what permits, licenses and special or specific agreements are required to implement the Project (other than routine construction permits). Where such need is identified, define the purpose, regulation, application procedures, and permit turn around timing. The required permits shall be shown in the Project schedule along with critical path.
- b) Keep Omnitrans informed of new regulations and permitting requirements. Designs shall meet existing and new regulations. Keep up-to-date of proposed future regulations related to the project and support Omnitrans in making an informed decision (cost to benefit analysis) to include future compliance items for the current design. The Firm shall include such future regulatory

## A&amp;E SERVICES – RUBEN CAMPOS PARK BUS STOP IMPROVEMENTS

compliance items as determined by Omnitrans as a part of the design.

- c) Prepare and submit application with text and required graphic exhibits to support agreement documents and permits. Follow through with the application process until the permission is granted or permits obtained. Firm shall determine the proper submission timing to successfully complete Final Design, page 32. Prepare and submit the agreements, permits, licenses, and other clearances required as a part of the PE report for the Project.

#### 11) PRELIMINARY DESIGN OF UTILITY RELOCATIONS

- a) Utilizing the recorded and checked locations of utility lines and facilities in or near the Project, determine the methods by which conflicts between such existing utility lines and structures and proposed construction and facilities may be resolved. The Firm, working with Omnitrans and utility owners, shall identify the utilities requiring relocations. Where conflicts are proposed to be resolved by reconfiguring utility networks, capacity studies shall be performed. Corrosion control shall be considered for any metallic utility crossings. Relocated utilities shall provide service equal to the existing installations; upgrades or betterments shall not be considered without Omnitrans' approval. The Firm shall evaluate the viable options for each alternative for permanent and temporary relocation, and assist Omnitrans to determine a course of action.
- b) The Firm shall identify all utility services required for the project (e.g., power, water, communication, etc.). The Firm shall verify that services are located nearby and shall include proposed service points on the PE plans. If services are not available, the Firm shall reconsider their design or show the necessary utility connections on the PE Plans and include these costs in the cost estimate. The PE utility plans shall demonstrate how maintenance access to manholes, vaults, cabinets, or other key facilities, new or existing, is maintained. Develop preliminary designs of the agreed relocations or other work and assist Omnitrans with coordination of this effort.

#### 12) PRELIMINARY DRAINAGE, HYDROLOGY AND HYDRAULICS DESIGN

- a) The Firm shall gather and review previously prepared drainage studies, if available, for the project area, and obtain available documentation from City or County agencies. The Firm shall identify potential impacts due to construction and future improvements. For the watershed zones which are included in the Project, the Firm shall prepare a hydrology/hydraulics analysis to

## A&amp;E SERVICES – RUBEN CAMPOS PARK BUS STOP IMPROVEMENTS

quantify the magnitude and frequency of flows from contributory areas (including the Project bounds) into existing storm drain systems. Identify the "before" conditions for handling storm drainage and the history of flooding of the Project area. Perform analysis of the effects of the Project on storm water runoff and any potential overload attributable to the Project. Base analyses on a design storm as required by the governing agency. The project shall convey the base flood without causing objectionable backwater or tailwater, increases in flood elevations, damage to surrounding property, excessive flow velocities, excessive scour, impacts to traffic, or flooding the busway or other facilities. Devise and recommend necessary improvements to the existing drainage facilities to accommodate the Project and, as may be necessary, to correct pre-existing conditions.

- b) Prepare preliminary drainage plans, sections, and details at the base map scale, including surface drainage, underdrain systems, sumps and pumps, pipe layout with catch basins and manholes, pipe and structure sizes and a drainage profile for the Project. Required drainage structures (box culverts, storm drains, etc.) conforming to all State, Regional and local regulations, standards, and other requirements (e.g. National Pollutant Discharge Elimination System (NPDES) and post-construction BMP) shall be shown on the PE plans and included in the cost estimate. Obtain approval of preliminary design from jurisdictional authority.
- c) Coordination with the City, RWQCB, and SBCFCD will be required for incorporation of stormwater pollution best management practices (BMPs) into the design to ensure that stormwater runoff is managed for water quality and quantity concerns. The reports must describe potential impacts of project construction and operation to surface and groundwater quality. Water quality data shall be compiled from documents such as the Santa Ana RWQCB Basin Plan, the Federal 303(d) List of Impaired Water Bodies, watershed management plans, total maximum daily loads (TMDL) reports, and Caltrans BMPs Handbooks. Pollutants of concern shall be identified, and project impacts shall be evaluated with regard to groundwater and surface water resources. Potential mitigation measures shall then be identified, including design pollution prevention BMPs, treatment BMPs (e.g., detention basins, bioswales, infiltration basins), construction BMPs, and source control BMPs. A cursory review of the 303(d) List indicates that Reach 4 of the Santa Ana River is impaired for pathogens and salinity, while a TMDL for pathogens has recently been developed for the downstream Reach 3 of the Santa Ana River.

## A&amp;E SERVICES – RUBEN CAMPOS PARK BUS STOP IMPROVEMENTS

## 13) PRELIMINARY DESIGN OF SIGNAGE, STRIPING, AND GRAPHICS

Review the evolving designs of Project and apply the established Design Criteria and Standards to develop a preliminary design definition of what signs, striping, and other graphics are required. Support the architectural and systems design work to establish spatial requirements for signage, striping, and graphics, pavement delineation, vehicle clearance markers, and other signs deemed necessary by code or Owner. Make sure all signage adheres to ADA requirements and that handicapped accessible routes are clearly marked. Prepare preliminary drawings showing the setting of each sign and graphic element and the standard or special text intended for each, and pavement delineation plan showing striping. The drawings shall include removal requirements of existing striping, signage, and graphics. Ensure review and approval by Omnitrans prior to finalization of preliminary design.

**6. DESIGN – FINAL DESIGN (FD)**

A. The Firm shall provide the services necessary to fix and describe the size and character of the entire Project including civil, architectural, structural, landscaping, utilities, systems design, equipment, construction sequencing, scheduling, user safety and maintenance requirements. FD provides for each discipline, a description of the economic factors influencing the choice of basic materials, equipment or systems, and an economic analysis considering estimated initial costs and projected costs over the life of the facility. It provides sufficient information to demonstrate that the functional needs and space requirements can be met within the programmed budget and scope of work. At the completion of FD, the Firm shall produce contract plans, specifications and, estimates for the project for the procurement of the facilities and systems construction. In general, the services performed in the Final Design Services are:

## 1) TECHNICAL AND PERFORMANCE SPECIFICATIONS

- a) Produce Standard Specifications for the Project. Produce technical and performance specifications as a part of civil construction contract to furnish and install facilities and equipment related to the Project. Include coverage of civil, utility, structural, and architectural.
- b) Prepare specifications for the furnishing and installation of structures and equipment for the Project. These specifications shall be based on the Greenbook Standard Specifications for Public Works Construction. The specifications shall clearly define work to be included in each bid item, unit of measurement, and unit price. Also, the specifications shall clearly make reference to all appropriate sections of standard specifications to define the performance and quality requirements for the construction contractor's work, including all major material testing and acceptance criteria. The special provisions should identify any

A&E SERVICES – RUBEN CAMPOS PARK BUS STOP IMPROVEMENTS

restrictions or other special requirements placed on the construction contractor.

- c) Prior to the submission of any contract specification submittals, the Firm shall complete a quality assurance verification of the specifications. The Firm shall have a qualified individual or individuals, not directly involved in the preparation of the specifications verify correctness and accuracy. The reviewer shall verify that measurement and payment provisions are consistent with the description of the work on the plans and the bid list and are consistent with any construction notes or written directions. The reviewer shall verify and initial that previous comments on the specifications have been resolved.

2) CONSTRUCTION AND PROCUREMENT PACKAGING

- a) The work of this task is to assist Omnitrans in planning the most advantageous methods of contracting and contract scoping for the Project.
- b) During the preliminary engineering design, assist Omnitrans in determining how the Project work shall be packaged or subdivided for final design/bid package that is cost effective and efficient given the Project's constraints and milestones. Refine the bid package during FD and produce a bid package that shall allow Contractors to competitively bid on this Project.
- c) In the planning of Omnitrans procurements of construction and equipment, the Contract documents prepared by the Firm shall reflect California Public Contracts Code Section 3400, which states, among other stipulations, that the specifications are to be prepared so as to not limit the bidding, directly or indirectly, to any one specific supplier and, further, that the specifications shall not designate a material, product, thing or service by specific brand or trade name unless at least two brands or trade names of comparable quality or utility are cited, followed by the words "or equal'.

3) CONTRACT UNIT DESCRIPTIONS

Prepare a set of Contract Unit Descriptions (CUD) which shall detail each design, construction and procurement contract, and define its type of contract, its limits, its scope, its length, major quantities or size and the estimated duration under normal construction conditions. Add the new CUD to the Project CUD book, or form such book, as appropriate. Over the course of preliminary engineering design, maintain the CUDs as changes in interfaces and scopes are decided.

## A&amp;E SERVICES – RUBEN CAMPOS PARK BUS STOP IMPROVEMENTS

## 4) COST ESTIMATES

The Firm shall prepare an independent cost estimate of the PE Design for review by Omnitrans. The Firm shall update the cost estimate at Final Design level as modifications may be required through comments from reviews by various governing agencies, stakeholders, and owner. Prior to the submittal of any cost estimate, the Firm shall complete a quality assurance verification of the estimate. The Firm shall have a qualified individual or individuals, not directly involved in the preparation of the estimate, verify correctness and accuracy. The reviewer shall verify the methods of quantity calculation and spot-check quantity calculations; verify that quantity calculations match the information depicted on the plans; verify that quantity and unit cost extensions are correct and accurate; and verify the unit prices were reasonably derived and correctly applied. Omnitrans may have an independent third-party review of the cost estimate. The Firm shall reconcile any differences greater than ten percent on any item resulting from any cost estimate reviews.

## 5) SCHEDULE ASSISTANCE

The Firm shall prepare an estimate of the construction schedule, including the number of working days required for each of the construction phases, along with key milestone dates. This estimate of working days shall be supported by a construction schedule and narrative describing anticipated construction methods, assumptions, and key milestones and interfaces with adjacent contractors.

## 6) PREPARATION OF CONSTRUCTION CONTRACT DOCUMENTS

a) The Firm shall prepare Project Definition Documents for a construction contract to completely define the scope of work of, and establishes the budget and schedule for, and advertising of each construction contract. Following design documents shall be included in the Project Definition Documents:

- i. General Requirements
- ii. Statement of Work (including or reference to all applicable specifications)
- iii. Design Criteria and Standards
- iv. Drawings
- v. Technical Reports and Other Mandatory Requirements
- vi. Mandatory Requirements and Non-Mandatory Reference Information

b) Note that Omnitrans will develop the Front End documents (General Conditions, Special Provisions, and other commercial requirements). The Firm shall review the General Conditions and

## A&amp;E SERVICES – RUBEN CAMPOS PARK BUS STOP IMPROVEMENTS

Special Provisions to identify any duplications and/or conflicting technical requirements, and to ensure that all contract documents developed by the Firm are consistent, complementary and technically sufficient.

7) **BID PERIOD SERVICES**

a) **PREPARATION OF ADDENDA**

Prepare such additional design work, drawings, and specification writing. Omnitrans will prepare any addenda and contract document revisions as needed.

b) **ENGINEER'S ESTIMATE**

Develop Engineer's Estimates consistent with the Project Definition Documents and other Invitation for Bid documents issued to bidders.

c) **OTHER SERVICES**

Assist Omnitrans in responding to technical questions posed by plan-holders. Participate in pre-bid meetings and issuance of addenda. Assist Omnitrans in the evaluation of bids during any competitive negotiated procurement process and conforming the contract documents prior to granting the Contractor the Notice-to-Proceed.

**7. Phase 2/Task Order 2: Services During Construction**

A. The Firm shall first complete Phase 1/Task Order 1 of this Project. When Omnitrans is satisfied with the completion of Phase 1 scope of work, the Firm may be granted NTP for Phase 2 of the project. The work entailed in Phase 2 shall be on a Time and Materials not-to-exceed basis. Firm shall not perform any work on Phase 2 of the project until written authorization is received from Omnitrans to proceed.

B. Construction activities are estimated for approximately two years from the start of Construction. The Firm shall provide Services During Construction (SDC) after the award of the construction contract by Omnitrans. The SDC services shall include a minimum of the following:

- 1) Review and approve all submittals including the design drawings and specifications submitted by the construction contractor for conformance with the Final Design. Each submittal shall have a turnaround time of three calendar weeks.
- 2) Respond to all requests for information (RFI) and other technical issues posed by construction contractor. Each RFI shall have a turnaround time of three calendar weeks.
- 3) Provide up to three (3) design changes during construction. Each design change shall have a turnaround time of four calendar weeks.

## A&amp;E SERVICES – RUBEN CAMPOS PARK BUS STOP IMPROVEMENTS

- 4) Update As-built drawings monthly
- 5) Prepare final As-built plans in CADD and submit hardcopies and electronic PDF files as required by the Owner and City. At a minimum, provide three each of full and half size drawings and a PDF e-copy
- 6) Attend construction meetings monthly
- 7) Conduct site visits monthly
- 8) Witness and accept factory performance tests

**8. Optional Task Order 3: Site Remediation**

If contaminated soil or groundwater is found during the initial geotechnical fieldwork, provide a scope of work to determine the extent of the contamination, remedial alternatives, and lead government agency cleanup requirements, cost, and schedule impacts as Optional Task Order 3. Omnitrans and Firm will negotiate a scope and budget for a change order to perform this work.

**9. PROJECT DELIVERABLES**

A. Major Project deliverables are listed below by Task Orders:

- 1) TASK ORDER 1:
  - a) Design Criteria and Standards
  - b) PE Plans, Specifications, Estimates
  - c) Project Schedule
  - d) VE Summary
  - e) FD Plans, Specifications, Estimates
  - f) Final Schedule
  - g) CUD
  - h) Construction Contract Documents

**B. REGISTER OF DELIVERABLES AND QUANTITY OF SUBMITTALS**

Within 10 working days of NTP, prepare a register of all deliverables required by the Scope of Work that shows the schedule, approval process, and status of each item. The register shall include, but not be limited to Document Control Log (DCL), monthly status reports, design schedule and bid documents for construction contracts. Submit the deliverable register for Omnitrans' review and acceptance. Maintain deliverable register for the duration of the Scope of Work and submit a monthly update, within seven days of the month closing, to Omnitrans.

A&E SERVICES – RUBEN CAMPOS PARK BUS STOP IMPROVEMENTS

C. QUANTITIES

For each submittal, provide 2 hard copies, pdf file, and editable electronic file

**10. PROJECT SCHEDULE**

- A. Project schedule should have a narrative description for each activity consisting of a work function or a task at a minimum.
- B. Neither the Agency nor the Contractor owns float. The Project owns the float. As such, liability for delay of Contract Milestone dates rests with the party whose actions, last in time, actually cause delay to the Contract Milestone dates.
- C. Incorporate phasing of project. Project Development including pre-design, preliminary engineering and final design, construction, and start-up and commissioning activities.
- D. Incorporate tasks, deliverables, and milestones as defined in Section 4.4 as the basis for the cost loaded schedule.
- E. The schedule shall be maintained and updated monthly with progress and forecast completion dates. The monthly updated schedule (current schedule) shall be measured against the approved baseline schedule. The monthly updated schedule shall be submitted to Omnitrans no later than 5 working days following the close of the month.

**11. PROJECT DOCUMENT CONTROL**

A. PROJECT CONTROL

Establish and operate systems and provide project control services for the control of the Project with respect to cost and schedule. The overall control system to be established shall provide a standard framework for defining work, assigning work responsibility, establishing budgets, controlling and forecasting costs and summarizing the monthly Project status.

B. DESIGN DRAWING/DOCUMENT CONTROL

- 1) Maintain complete files of all records and documents pertaining to this contract, Project design drawings/documents, baseline changes, and related documents, electronic data (CADD), and correspondence. Print and distribute design documents and revisions thereto throughout the Project Development phase. Support audits, claims, and litigation requirements with document retrieval. Provide reproduction of retrieved documents.
- 2) Control and protect original baseline documents including Contract drawings, Contract technical and performance specifications, and design criteria and standards throughout Project Development phase.
- 3) Maintain historical files of baseline documents during the design phase until turnover of files to Omnitrans.

## A&amp;E SERVICES – RUBEN CAMPOS PARK BUS STOP IMPROVEMENTS

- 4) Provide 3-D CADD capabilities for design elements and facilities to develop conceptual layouts, and renderings.
- 5) Define the performance specifications, technical specifications, and formats for the design work, in-progress submittals, final submittals, signed and sealed contract drawings and electronic data delivery. Unless specifically exempted, require that all such drawings be produced electronically using the approved CADD system and standards. Develop and transmit CADD record files to Omnitrans for archival on Omnitrans accepted media for the Contract documents.
- 6) The electronic CADD files to be delivered under the Contract contain information to be used for the construction as-built plans and documents for the Project. The official Contract documents of record are those Mylar documents produced by the Firm that bear the company seal and signatures.

## C. PROJECT DATA DISSEMINATION

- 1) The Firm shall be required to utilize an Internet Collaboration System (such as an FTP site) to assist in the communication and management of the Project and to make available key project data and reports to all authorized project participants via the Internet from any location.
- 2) The Firm shall submit all printed correspondence and other contractually required documentation (including data Submittals and Requests for Information (RFI) or Change (RFC)) in electronic format to Omnitrans in addition to normal hard copy distribution.
- 3) Project data to be submitted electronically in pdf as well as editable formats.

## D. RECORD STORAGE AND RETENTION

Process records for Omnitrans record storage and retention in accordance with Industry accepted procedures and retention schedules. Provide for routine turnover of records, design review packages, solicitation packages, and specifications and remaining Project documents to Omnitrans for long-term for archiving and retention as requested by Omnitrans.

## E. CHANGE CONTROL

Coordination and management of changes to the design baseline, including change document preparation and processing using computer system tools throughout the Project. Establish a system for effective coordination between specific engineering functions and ensure that baseline design changes are consistently applied to every affected document.

**A&E SERVICES – RUBEN CAMPOS PARK BUS STOP IMPROVEMENTS****F. CONTRACT CHANGES**

Notify Omnitrans immediately of any change to the Project that is believed by the Firm to be out of the scope of the contract or may otherwise require revision to the Firm's Contract. Provide notice of scope changes associated with incorporating design changes, preparation, and submittal of Requests-for-Change in accordance with Omnitrans' policy and procedures, preparation of cost proposals in response to Omnitrans notices or requests, and methods for identifying and tracking work costs associated with authorized Firm's contract changes. No change work shall be performed without written approval from Omnitrans' Director of Procurement and CEO/General Manager.

**G. CHANGE REPORTS**

Provide monthly status reports, and prepare written evaluation or analysis of proposed design changes as requested by Omnitrans.

**12. QUALITY ASSURANCE**

The Firm shall have documented Quality Assurance procedures in place to control and verify the design of the Project in order to ensure that the design criteria, owner specified requirements, and requirements of the relevant regulatory agencies are met. Design control includes ensuring that design requirements are identified and met, planning of design interfaces are complete including design verification activities, and design changes are controlled through Project completion. The success firm's Quality Assurance procedures shall apply to other Subcontractors.

# ATTACHMENT B

Omnitrans

Ruben Campos Park Bus Stop Improvements

Fee Schedule for David Evans and Associates, Inc. Revised February 11, 2014

Task & Description	PM	PE	CD	LA	LO	IRR	ADM	SPM	PS	SA	CREW	Geotech	Total	Reimbursable
	\$175	\$150	\$115	\$130	\$95	\$425	\$30	\$165	\$160	\$135	\$235		\$	\$
<b>PRE-DESIGN</b>														
Kickoff Meeting	3			3									\$915	\$50
Design Workshop	3	3		3									\$1,365	\$50
Stakeholder Meeting	3	3		3									\$1,365	\$50
Sub-Total	9	6	0	9	0	0	0	0	0	0	0		\$3,645	\$150
<b>DESIGN - PRELIMINARY ENGINEERING</b>														
Topographic Survey, Utility Research, and Base Mapping														
Survey Control														
Optional: ROW Engineering, See Below														
Field Topography	1	2												
Utility Research and Mapping	1	2												
Design Geotechnical Investigation and Report	1	1	2											
Street Improvement Plans	4	8	20										\$480	\$200
Composite Utility Plan	2	3	8										\$3,145	\$300
Signing/Pavement Delineation Plans	3	6	20										\$4,530	\$350
Preliminary Landscape Assessment	1	1	1	6	4	4							\$4,110	\$400
Construction Cost Estimate	1	2	6										\$8,170	\$262
Preliminary Specifications	2	6	2										\$4,200	\$126
Sub-Total	16	30	59	6	4	4	8	3	12	48	8		\$23,520	\$1,382
<b>DESIGN - FINAL DESIGN</b>														
Street Improvement Plans	6	12	24										\$5,610	\$168
Composite Utility Plan	2	2	6										\$1,340	\$40
Signing/Pavement Delineation Plans	2	4	12										\$2,330	\$70
Planting and Irrigation Plans, Specs, Estimates	1	2	2	20	8	24							\$8,785	\$203
Construction Cost Estimate	2	2	6										\$1,340	\$40
Specifications	2	8	2										\$1,940	\$58
Bid Services	5	4	8	2	4	4	2						\$3,535	\$106
Sub-Total	20	32	60	22	12	28	2						\$22,860	\$686
<b>PHASE 2/TASK ORDER 2:</b>														
Submittal review and approval													\$0	\$0
Response to Requests for Information													\$0	\$0
Prepare Asbuilt CADD files													\$0	\$0
Attendance at construction meetings													\$0	\$0
Monthly site visits													\$0	\$0
Sub-Total	0	0	0	0	0	0	0						\$0	\$0
<b>GRAND TOTAL</b>	\$7,875	\$10,200	\$13,685	\$4,810	\$1,520	\$4,000	\$800	\$555	\$1,920	\$6,480	\$1,880	\$8,170	\$50,025	\$2,218

Time and Material

ROW Engineering and Geotechnical tasks are not included in project totals

Reimbursable figures are for budgetary purposes

Legend:  
 PM=Project Manager, PE=Professional Engineer, CE=Civil Designer  
 LA=Landscape Architect, LO=Landscape Designer, IRR=Irrigation Designer  
 ADM=Administration, SPM=Survey PM, PS=Professional Land Surveyor  
 SA=Survey Analyst, CREW=2-Person Survey Crew



# LA PRENSA

Semana de 17, de enero de 2014

INTERIOR DEL SUR DE CALIFORNIA

www.laprensaenlinas.com

## TRÁNSITO RÁPIDO DEL FUTURO



DAVID LACROIX PHOTOGRAPHY

Un nuevo bus que se utiliza en un ejercicio de entrenamiento deja una parada de autobús en el extremo norte de la ciudad en Méndocino, 08 de enero 2014 en San Bernardino. La construcción está casi terminada en el nuevo sistema de tránsito rápido.

**Nuevos autobuses conectarán a negocios, universidades y más para atraer a viajeros para que usen el transporte público más**

DAVID OLSON  
-DE PRESS-OUTLINE-

Cast terminan la construcción de la línea de autobuses de tránsito rápido con un costo de \$100.7 millones que trae la esperanza de darle un impulso económico a la atriñanada ciudad, y la posibilidad de ser el primer tramo de una red a través de múltiples condados.

El proyecto, denominado "sbX", ofrecerá viajes rápidos en autobuses de alta tecnología, junto a plataformas y máquinas dispensadoras de boletos, similares a las del sistema ferroviario.

La meta es de persuadir a más residentes a que dejen de utilizar sus automóviles y optimizar el servicio de transporte público del cual dependen miles de personas.

Omnitrans, el administrador de la línea sbX, y la Agencia de Tránsito de Riverside están buscando otras rutas para autobuses de tránsito rápido que serán parte de una amplia red que se desarrollará durante las siguientes décadas.

Esto permitirá a los residentes del Inland a transportarse por autobuses rápidos a las estaciones del Metrolink y hacia

una línea de ferrocarril que se planifica entre San Bernardino y Redlands.

La Supervisora del Condado de San Bernardino, Janice Rutherford, y miembro de la junta directiva de Omnitrans, dijo que ella y otros funcionarios observarán muy de cerca si tiene éxito la línea sbX.

"Si... sbX fracasa, será sumamente difícil convencer a los que toman decisiones para que aporten fondos", para líneas de tránsito rápido en el condado de San Bernardino, explicó.

Las 21.7 millas de sbX recorrerán desde el norte de la universidad Cal State San Bernardino a la universidad Loma Linda University y al hospital Veterans Administration (VA hospital, por sus siglas en inglés) y otras clínicas cercanas.

Cerca de un tercio de la ruta tiene carriles para autobuses solamente, y habrá un promedio de una parada cada milla. Esto, junto a dispositivos en los autobuses para cambiar la luz de los semáforos a verde, disminuirá el tiempo de viaje de Cal State al VA hospital de 14 minutos, en un autobús regular, a 10 minutos. Los autobuses estarán recogiendo pasajeros en las estaciones cada 10 a 15 minutos.

"Los residentes están dispuestos a considerar el transporte público si les es conveniente", dijo Wendy Williams, vocera de Omnitrans.

La inauguración de la línea se espera

para finales de abril. Una de las paradas en San Bernardino será parte de un centro de tránsito, programado a inaugurarse el próximo año cuando el sistema de Metrolink se extienda al centro de la ciudad.

### TENDENCIA NACIONAL

La línea sbX, con fondos, en su mayoría federales, es la primera de su clase en el Inland. Pero los sistemas de tránsito rápido es una de las tendencias más populares en transporte público, principalmente porque es mucho más barato que el ferrocarril.

En los Estados Unidos por lo menos 50 sistemas de estos están operando, bajo construcción o en la etapa de planificación, dijo Dennis Hineshough, director del instituto que recibe fondos federales, Instituto nacional de transporte de autobuses rápidos (National Bus Rapid Transit Institute), el cual lleva a cabo investigaciones y provee asistencia técnica a los sistemas de autobuses.

"Todas las ciudades de mediano o gran tamaño ya tiene o están considerando un sistema de autobuses rápidos", explicó Hineshough.

Uno de los mejores, dijo, es la línea Naranja del Metro entre Los Angeles y el valle de San Fernando. La línea de 14 millas - que después se extendió a 18 millas - atrae

AUTOBUSES: CORPORA EN PÁGINA A2

## AUTOBUSES

CONTINUA EN PÁGINA A2

ju la atención del triple de pasajeros entre semana de lo que se proyectó a un año después de su inauguración en el 2006; y el día de hoy ofrece servicios a cerca de 30,000 pasajeros en un día entre semana común, dijo la vocera de Metro, Anna Chao.

La línea de autobuses es la iniciativa más reciente de San Bernardino que intenta revertir un declive en la economía que llevó a la declaración de la banca rota. Las tasas de crimen y pobreza de la ciudad están entre las más altas del estado.

El Alcde de San Bernardino, Pat Morris, uno de los partidarios más entusiastas del sbX, pronosticó que el proyecto daría paso a la construcción de viviendas, negocios y oficinas cerca a las plataformas de los autobuses.

En el 2013, la ciudad aprobó districtos de urbanización que abarcan a 13 estaciones. La designación de dichos districtos permite el desarrollo residencial y de negocios, pero prohíbe los negocios de lavado de autos, talleres de servicio mecánico y otras construcciones que no estén orientadas hacia el transporte público.

Los sistemas de autobuses de tránsito rápido atraen el desarrollo económico porque permite a los residentes que viven cerca a las estaciones a movilizarse rápidamente a sus trabajos, restaurantes, negocios y atracciones culturales, dijo Martin Wechs, un investigador prominente en planificación y política de transportación en la corporación con base en Santa Mónica, RAND Corporation.

Pero, agregó, "es un poco como el buro y la gallina", porque las personas se trasladarán a las viviendas cercanas a las estaciones si existen sitios de interés a donde viajar a través de los autobuses de tránsito rápido; de la misma manera que los planificadores de negocios quieren una base de clientes antes de construir los negocios.

### ESCEPTICOS DEL SBX

El Concejal de la Ciudad, John Valdivia, dijo que San Bernardino no tiene la densidad demográfica para el éxito de un sistema de autobuses de tránsito rápido. Agregó que sbX es una "distorsión" para una ciudad que está luchando para proveer los servicios básicos.

"Es una buena opción para Los Angeles, es algo bueno para grandes urbes, pero no es bueno para San Bernardino", dijo Valdivia, quien llama al proyecto un "despilafar".

Valdivia también hizo mención de los quejas de los dueños de negocios y restaurantes que están molestos porque el proyecto eliminó el viraje hacia la izquierda en algunos puntos. Los clientes tendrían que manejar más lejos para hacer un viraje en U.

Algunos espacios de estacionamiento a lo largo de R Street en el centro de San Bernardino fueron eliminados para darle lugar a los carriles exclusivos para autobuses. Bud Ammons dijo que las ventas en su negocio, Ammons Diamond & Coin Gallery, la cual ha ocupado varios locales en el centro desde 1953, se han despidiendo como resultado del proyecto.

Guadalupe Plascencia dijo que perdió clientes en su barbería Barber Shop 333, debido

a la desaparición de espacios de estacionamiento al frente del negocio. La gente se pone nerviosa si tienen que caminar muy lejos en un vecindario con fama por el índice de crimen, dijo Plascencia mientras señalaba al otro lado de E Street a un hombre que golpeaba su cabeza en contra del edificio del banco Union Bank y un grupo de muchachos jóvenes merodeando en el estacionamiento.

Pero Morris dice que los dueños de negocio tienen que darle una oportunidad a sbX. Per años, el centro de la ciudad ha lidiado con negocios con dificultades o vacíos, explicó.

"El centro está moribundo desde que el centro comercial Carousal empezó a irse para abajo hace 15 años", dijo. "La situación vigente no es aceptable".

La línea de autobuses transportará rápidamente a los estudiantes de Cal State al centro en minutos, al cine Regal Cinemas, y generará un mercado para algunos restaurantes y tiendas nuevas, además de ayudar a las ya existentes, agregó Morris.

Los funcionarios no esperan un desarrollo económico masivo de la noche a la mañana pero durante los siguientes 20 a 30 años, dijo el vocero de sbX, David Rutherford. "Estamos construyendo esto para lo que se plantifica en el futuro".

### CON LOS DEDOS CRUZADOS

La ruta se escogió en parte por los miles de posibles viajeros en Cal State, Loma Linda y VA. El vocero del sistema de cuidado de salud VA/ Loma Linda Healthcare, Jim Rich, dijo que muchos de los pacientes y empleados ya



FOR DAVID PRESS-GETTY IMAGES

El proyecto, denominado "sbX", ofrecerá viajes rápidos en autobuses de alta tecnología, junto a plataformas y máquinas dispensadoras de boletos, similares a los del sistema ferroviario.

## OPINIÓN DE PASES

utilizan el transporte público y darán la bienvenida a mejores servicios.

Algunos dueños de negocios tienen una actitud de "mejorar y ver resultados" acerca de sbX.

Ricardo Montes de Oca dijo que una de las estaciones de sbX en la calle Hospitality Lane en San Bernardino eliminó el viraje a la izquierda que da acceso a su restaurante, Philly Steak and Subs, lo cual podría ahuyentar a posibles clientes. Pero, Montes de Oca, también mencionó que el sbX podría atraer, por ejemplo, a los empleados del Centro Médico de la Universidad de Loma Linda durante su almuerzo impulsados por el servicio de autobuses frecuente y rápido.

Omnitrans proyecta 5,000 pasajeros en sbX en el primer año. Una manera de medir el éxito será no sólo si la línea de autobuses alcanza o supera ese número, pero también si logrará atraer personas que no utilizan el autobús actualmente, agregó Williams.

La Línea Naranja atrajo algunos dueños de automóviles. En una mañana reciente, David Karp de 55 años, vistiendo traje y corbata, estaba abordo del autobús de la Línea Naranja con su portafolio después de un desayuno de negocios.

Karp, un mediador de bienes raíces y negocios, necesita llegar a algunas reuniones de negocio con su automóvil. Pero algunas veces deja su automóvil en el estacionamiento de la estación de la Línea Naranja cerca de su oficina en Van Nuys, especialmente cuando necesita ir al centro de Los Angeles. La Línea Naranja conecta en North Hollywood al Metro que viaja hacia el centro.

El transporte público a veces lleva más tiempo que viajar en auto - aunque cuando hay mucho tráfico, puede ser más rápido - pero Karp dice que ahorra en combustible y puede trabajar durante el viaje.

Ofelia Molina de 60 años, no tiene automóvil. Y no tiene otra alternativa que utilizar el transporte público desde el valle de San Fernando hasta Beverly Hills donde cuida de una mujer de la tercera edad. El viaje, que incluye dos autobuses, la Línea Naranja y el subterráneo, le lleva 2 1/4 horas. El utilizar la Línea Naranja de casi 14 millas en lugar



Un peatón pasa por la nueva parada de autobús en el divisor central de la calle E Street en San Bernardino. Este proyecto "sbX" con un costo de \$36.7 millones que trae la esperanza de dar un impulso económico a San Bernardino, tiene la posibilidad de ser el primer tramo de una red a través de múltiples condados.

de los autobuses que paran cada pocas cuadras y viajan con tráfico pesado, probablemente le da una hora o más de tiempo libre cada día, dijo Molina en español.

La Línea Naranja viaja totalmente en carriles exclusivos para autobuses, lo que significa que no se quedan varados en el tráfico. Todos los pasajeros se pagan por adelantado lo que agiliza el abordaje.

Omnitrans decidió utilizar dos tercios del sbX en carriles no exclusivos para ahorrar dinero en la adquisición de terreno y en construcción. Las dispensadoras de boletos no aceptan dinero en efectivo, para prevenir robos y para ahorrar en el costo de automóviles blindados para recoger el dinero, así que se les permite a los pasajeros pagar su pasaje dentro del autobús, dijo Williams.

Hinsburgh dijo que otras líneas de autobuses de tránsito rápido tomaron las mismas decisiones debido al costo y la rebaja en gastos lo cual hace más probable que agencias como Omnitrans puedan construir líneas adicionales.

Pero, Wachu agregó, que las expectativas sobre sbX deben ser modestas. Podría persuadir a algunas personas a dejar sus automóviles, pero la mayoría de pasajeros será seguramente personas que ya utilizan el autobús y que disfrutará de un servicio más rápido, concluyó.

La mayor razón: a diferencia, por ejemplo, del centro de Los Angeles, los conductores pueden encontrar amplios estacionamientos gratuitos en San Bernardino y considerarlo sus automóviles como más convenientes, dijo Wachu.

Uno de los pocos lugares con estacionamiento pagado a lo largo de la ruta es Cal State San Bernardino, donde un pase anual de estacionamiento tiene un costo de \$300. Los estudiantes pueden viajar gratis por Omnitrans.

Jaime García y José Quintero manejan hacia la universidad. Pero ambos estudiantes indicaron que piensan cambiar al sbX, el cual terminará su recorrido al norte en las calles Kendall Drive y Palm Avenue, a una distancia corta a pie de

su casa.

"Si nos lleva de aquí hacia allá, claro que lo utilizaremos", dijo García mientras ambos estaban sentados en el centro de estudiantes.

Y con el WiFi gratuito a bordo de los autobuses en el futuro, "puedo hacer mi tarea sbX", dijo.

Darryl Snook, un estudiante que viaja en varios autobuses desde Moreno Valley, dijo que algunas veces pierde el viaje en el autobús de la Ruta 2, y tiene que esperar media hora por el siguiente autobús. Espera con ansias el sbX.

"Rápido es siempre mejor", agregó.

## DATOS DE SBX

El sistema de autobuses de tránsito rápido está programado a inaugurarse en abril.

**Horario:** los autobuses operarán de 8 a.m. a 8 p.m., cada 10 minutos durante horas pico, y cada 15 minutos el resto del día.

**Proyección de pasajeros:** cerca de 5,000 por día durante la semana en el primer año.

**Estacionamiento:** cuatro de los

33 estaciones tendrán espacios para estacionar para los usuarios.

**Seguridad:** todas las estaciones y autobuses tendrán cámaras de seguridad, y las estaciones contarán con teléfonos de emergencia.

**El siguiente autobús:** letreos electrónicos con mensajes y la aplicación ya existente de Omnitrans notificará a los viajeros cuándo llegará el siguiente autobús.

**WiFi:** disponible en los autobuses nuevos este año.

**Estéticas:** algunas plataformas incluirán arte. Las casetas tendrán el logotipo de sbX, flores u otro diseño.

## PROYECTOS DE TRÁNSITO RÁPIDO EN PLANIFICACIÓN

Entre algunos de los proyectos de tránsito rápido que se planean en el Inland:

• El servicio de Metrolink en San Bernardino se extenderá una milla al este al centro de tránsito en las calles Blatto Avenue y E Street, donde también se está construyendo una estación de sbX. Se espera que la construcción inicie en las siguientes semanas.

• El gobierno municipal de San Bernardino está planeando una línea de ferrocarril de 2 millas desde el este del nuevo centro de tránsito en San Bernardino hacia la Universidad de Redlands. Se renovarán los rieles existentes.

• Una extensión de 24 millas de la línea R del Metrolink desde Riverside a la base March Air Reserve Base y Perris está prevista para mediados del 2015, con un costo de \$347 millones. El gobierno federal anunció el mes pasado una subvención de \$75 millones para este proyecto.

• La Agencia de Tránsito de Riverside está considerando la creación de un servicio de autobuses con paradas limitadas y expreso entre Riverside y Corona, principalmente a lo largo de la avenida Magnolia Avenue.

## COSTOS DE SBX

**Costo de la línea sbX:** \$36.7 millones

**Costos anuales de operación:** \$4.5 millones (Omnitrans ahorrará \$1 millón si reduce servicios en rutas similares con autobuses estándares).

**Personal nuevo:** 23 personas.

# The El Chicano Weekly

## Thursday, January 23, 2014



Join Redlands Senior Center for a little dinner, dancing

AD

### INSIDE

ONE SECTION, 20 PAGES

Calendar A7  
Classifieds A15  
Legal Notices A16  
Opinion A4  
Service Dir. A6-7  
Sports A12  
Hollywood Gossip A19

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## New SBX buses to offer more features to commuters



PHOTO/JAZMINE COLLINS

SBX bus stationed in front of Cal State.

By Jazmine Collins

Construction has proved to be quite a headache for those traveling along E Street of San Bernardino,

but there is light at the end of the tunnel.

The OmniTrans SBX E Street Corridor Rapid Transit Project is just a few months shy of comple-

tion. "We have to suffer in the short term in order to enjoy the long term benefits," says Board Chairman for

SBX cont. on next page.

in 1966 by Howard H. "Tim" Hays to explore issues in journalism.

Suarez, who spent 14 years at the PBS NewsHour, has titled his speech: "Getting Ready for the Next America." Just recently he has been named permanent host of Al Jazeera America's daily program "Inside Story."

The lecture honors the legacy of Howard H. "Tim" Hays, Jr., the longtime owner and publisher of The Press-Enterprise newspaper. His son, Tom Hays, created an endowment fund to make sure the tradition of the lecture lived on in Riverside even after his father's death in 2011. Although the talk is free, reservations are requested and may be made online or by calling (951) 827-3144.

A book-signing and reception will follow immediately after the lecture, with books available free to the first 200 people.

## Got News?

Have news, an event or want to recognize someone in the community? Send information to Community News Editor Jazmine Collins at [iccn.jazmine@gmail.com](mailto:iccn.jazmine@gmail.com) or call 909-381-9898 ext. 208

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PHOTO/JAMIE COLLINS

New SBX buses have a sleeker, light rail look.

**SBX cont. from front**

OmniTrans, Alan Wagner during a recent press conference. The project included the construction of 16 new stations and four park and ride locations along the 15.7 mile corridor, strategically placed along key, high traffic areas near universities, commercial areas, entertainment districts and medical facilities.

The 60-foot buses run on Compressed Natural Gas and offer a solution to reduce vehicle congestion while being a more environmentally friendly, cost effective alternative for San Bernardino commuters. The buses come equipped with 110-volt electrical

outlets and free wifi- perks that OmniTrans hopes will entice a new type of rider for the bus system. Each bus offers closed circuit video cameras that send a live stream to security officials for additional safety.

The stations have convenient e-ticket vending machines and digital message boards displaying real-time arrival and departure. The stations also include emergency telephone services for enhanced security.

The buses will be running in center lanes and OmniTrans CEO, Scott Graham, emphasized the importance of safety. The yellow, dedicated lanes are for buses only

and Graham urges the public to stay out of those lanes and increase awareness.

s to signage along the corridor. Testing on the route will begin in February.

The express service is set to begin passenger service on April 30th, 2014. The SBX will be operating on weekdays only from 6:00 am to 10:00 p.m., operating in 10-minute intervals during peak times and every 15 minutes off-peak.

The system is projected to accommodate approximately 3,600 people per day during its first year in service.



COURTESY/JAMIE COLLINS

Mayor Pat Morris takes a ride in the new SBX bus.

## City Hall Information

300 North "D" St., San Bernardino, CA 92418. Main telephone number (909) 384-5211. Monday - Thursday 7:30 a.m. - 5:30 p.m. Closed Fridays. Mayor's Office and Water Department open until 4:30 p.m. 2nd floor access.

Water Department after hours service (909) 384-5141.

City Manager's Office (909) 384-5122

City Council Office (909) 384-5188

Council meetings first and third Monday of each month, 3 p.m.

## **THE PRESS-ENTERPRISE**

**SAN BERNARDINO: New median curbs catch drivers by surprise**

BY CASSIE MACDUFF , STAFF COLUMNIST

Published: January 29, 2014; 04:05 PM

Ker-smash! Pow! Crunch!

That's the sound of cars smashing into the new median curbs along San Bernardino's express bus route.

Of two reported accidents, one involved a San Bernardino police cruiser.

A sergeant was driving the patrol car out of a driveway downtown to make a left turn onto on E Street at 1:30 a.m., Jan. 4 – when he hit the median curb that wasn't there before.

The impact blew out three tires. Pow!

Fortunately, nobody was hurt.

The following week, a restaurant owner witnessed a similar accident when a driver tried to make a left into a business' driveway.

"People don't see it and they run over it," Burger Mania owner Vassileios Douvikas said. "Yesterday, a person just totaled his whole car."

Omnitrans said they're aware of the problem; they've seen the tire marks on the yellow-painted curbs. I think Omnitrans, which built the sbX line with center-running lanes, needs to give motorists a better visual cue that the new curbs are there.

A simple solution, probably not very expensive, would be to install lane markers like the ones that prevent drivers from entering toll lanes on the 91 freeway, white sticks about 2 feet tall with yellow reflectors on their tips, spaced about 5 feet apart.

Lt. Rich Lawhead said he suggested such markers or traffic cones to the city engineer. The engineer is now pushing to have No Left Turn signs installed on the medians, he said.

There haven't been any other reports of solo accidents from drivers hitting the curbs. But then, people who wreck their own cars often don't report the crashes, preferring to pay for the repairs out of their pockets to avoid insurance rate increases.

I asked Omnitrans spokeswoman Wendy Williams whether the transit agency is considering better markings for the median curbs.

She said the agency is aware drivers are hitting them and is looking for a way to make them more visible. She didn't know what the solution will be or how long it will take to put it in place.

Sun  
Sunday, February 09, 2014

# THE SUN

## LOCAL GOVERNMENTS

### Carey Davis transitions into San Bernardino mayor's role



Carey Davis

By [Ryan Hagen](#), *The Sun*

POSTED: 02/09/14, 5:29 PM PST

SAN BERNARDINO >> Carey Davis thought he was busy during the high-stakes campaign for mayor, a 10-month rush that toward the end seldom included eight hours for sleep, but the period between his election and swearing-in is proving even busier.

"I have two transitions," Davis said Thursday in one of a series of interviews over several days packed between other phone calls and lost cell service as he rode Metrolink back from Los Angeles.

Until the end of the month — just before his March 3 inauguration — he plans to continue half days at Hehr International as he transitions out of his job as corporate controller there, meaning that most frequently he gets on the 5:40 a.m. express train, works until nearly 1, and arrives back in San Bernardino at 2:20 p.m.

Much of the rest of his time is spent learning everything he can about the details of conditions and plans in San Bernardino and the region, and beginning to work alongside outgoing Mayor Pat Morris on those plans.

It started several hours after Tuesday's election night party ended, when Morris picked up his successor and drove him to an Omnitrans meeting and, right afterward, a SanBAG meeting.

"This was not simply a courtesy visit," Morris said of his meetings with the two regional bodies, which meet monthly. "Important items were listed on the agenda — light rail to Redlands, the 10-year development plan for Measure I that includes a lot of things in this city that we need to drive forward on, Tippecanoe — he was not just listening and greeting, he was fully engaged."

Such regional issues got limited discussion during the mayoral campaign, despite the major role San Bernardino's mayor has played in them for the last several years, and Davis said that while he wasn't taken aback by any of it he had needed to take "copious" notes.

"It was very informative, and I was well received," he said. "I look forward to working with both (Omnitrans and SanBAG) alongside my other duties."

Morris and his chief of staff and son, Jim Morris, say they've fully devoted themselves to making sure Davis knows everything he needs to over the next month.

That's particularly because turnover over the last few years means few elected or appointed officials have been in their job for more than two years.

"Professionally, we don't have a deep knowledge bank, but we have all of the records and the files we'll go through," said Morris, who has been in office eight years. "We are at this point the longest-serving office in City Hall, and so it is up to us, it's our obligation to get him moving. ... He is, fortunately, an exceptional student."

Among the subjects to study are bankruptcy litigation, the complicated process of unwinding the city Redevelopment Agency, the San Bernardino International Airport and what it will take to fulfill his various campaign promises.

Some of those promises, Morris noted, don't quite match the direction he wanted to take the city, although he was an enthusiastic supporter of Davis.

"Carey is not a shrinking violet," Morris said. "He has his ideas on how we unfold the future. It's going to be his administration."

# **Redlands Daily Facts**

## **Tuesday, February 11, 2014**

## **Redlands Daily Facts**

### **OPINION**

#### **The News & Views: S.B. rapid-transit bus line is state-of-the-art**

POSTED: 02/11/14, 1:25 PM PST

By Howard Hurlbut

Guest columnist

The new \$191.7 million rapid-transit bus line to provide rapid travel from Loma Linda University to Cal State San Bernardino is state-of-the-art.

The bus line, called sbX, is 15.7 miles long — much of it along E Street and Hospitality Lane. About a third of the route will have a dedicated center lane just for buses.

Fourteen new 60-foot long hi-tech buses — with on-board ticket machines and wi-fi — will be able to change red lights to green to avoid delays.

Bus stops, about a mile apart, feature raised platforms to make boarding easier, especially for people with handicaps.

These bus stops have kiosks with electronic ticket machines, emergency telephones, and electronic travel signs showing the arrival time of the next bus.

Buses will run at 10-minute intervals during peak hours, at 15-minute intervals during off-peak hours.

Intercoms on the kiosks provide riders with push-button access to Omnitrans customer service during business hours.

Other bus stop features include solar-powered lighting in the roof and overhead cameras providing surveillance of the platform.

Officials say they expect the line to spur economic development over the next 20 to 30 years. Omnitrans estimates 5,600 riders in the first year.

#### **RIVERSIDE ALSO PLANS NEW BUS LINE, TO BEGIN IN 2015**

Riverside is also launching a fast bus line, RapidLink, with 14 new buses. Beginning in 2015, it will run 12 miles from UCR to the Galleria using University and Magnolia avenues.

With dedicated bus lanes, stops about a mile apart, and traffic signal priority, travel time will be reduced by 20 percent. Buses will run 15 minutes apart.

It is projected to cost \$12.3 million.

#### **DEMOCRATS RESIST PLAN TO FAST-TRACK TRADE PACTS**

At least 161 Democratic members of the House of Representatives are on record as expressing reservations regarding President Obama's plan to fast-track his foreign trade deals.

No Democrat in the House has been willing to co-sponsor the legislation, only Republicans.

If his plan is approved, it would limit Congressional debate and force quick votes on his trade pacts with Europe and with Pacific Rim nations — after the agreements had already been signed.

Democrats have been critical of Obama's first-term trade pacts with Colombia, Panama and South Korea — concerned about the disregard for environmental problems and workers' interests.

They question the total secrecy under which these trade agreements are being written — as well as the fact that most of the insiders on the deal-making are corporate lobbyists.

Liberal Democratic opponents of “free-trade” agreements — from NAFTA on — are now joined by conservative Republicans such as Rep. Michele Bachmann who oppose ceding too much power to Obama.

Conversely, some of the country’s most powerful corporations are working hard with Obama to push his trade proposals.

Both pacts would allow multi-national corporations to overrule any participating nation’s labor regulations and environmental standards.

The Trans-Pacific Partnership (TPP) would be the largest trade deal in history. It spans 11 other countries covering more than 40 percent of the world’s gross domestic product.

The TPP pact would pit U.S. workers against lower-paid Asian workers, lowering wages and sending more jobs overseas.

This trade pact can determine U.S. policies on food safety, energy, financial regulation, and other areas of Congressional authority.

#### **BIG TRUCKS SHOULD HAVE BEEN FIRST TO GO ELECTRIC**

Bob Lutz, a former General Motors (GM) executive, says that pickup trucks, SUVs and vans should have been the first vehicles to become powered by electricity.

He contends that small vehicles like the Volt are already very economical to run, whereas trucks that get only 11 to 12 miles per gallon would achieve much greater savings by using electric power, particularly on short hauls.

Lutz recalls that GM had hybrid models running as early as 1968, but didn’t put them in production because they seemed back then to be a bad business proposition.

Instead, Japanese firms like Toyota have taken the lead with hybrids.

Lutz is now on the board of VIA Motors, which is producing a hybrid truck that can travel 400 miles on combined electric and gasoline power.

#### **U.S. GOVERNMENT NOW HAS FEWEST WORKERS SINCE 1965**

In 2013 the federal government had the fewest civilian employees since 1965. And that was before last year’s across-the-board cuts in federal budgets.

Currently, 2 percent of all workers are federal employees. In 1965 that figure was 4.6 percent.

*Howard Hurlbut is an emeritus professor of the University of Redlands and a resident of Redlands.*

TRANSPORTATION

## SanBAG gives Gold Line equal priority

**By Liset Marquez  
and Sandra Emerson**  
*Staff Writers*

The San Bernardino Associated Government's board of directors has agreed to give no preference to its future rail projects. However, the decision does not change funding already designated for the Redlands Rail Project.

This comes after a previous decision to give a lower priority to the Gold Line extension to Montclair was criticized by area transportation officials.

The board on Feb. 5 decided to amend the motion on SanBAG's rail projects, agreeing to give equal priority to all three items, the third being double-tracking part of Metrolink's San Ber-

nardino-Los Angeles line.

Despite the lack of immediate funding for the Gold Line extension, local leaders favored the changes.

"It wasn't sending a good message to D.C., because all three projects are important," said Montclair Mayor Paul Eaton, a SanBAG board member. "Our thought was 'let's do away with the numbers' because they are all extremely important."

Eaton was referring to the fact that if SanBAG were to seek federal assistance on the Gold Line light-rail project, the low priority rating could have diminished chances of getting the funds.

Funding for the SanBAG rail projects is based on the estimated \$1.5 billion in revenue available during the span of Measure I, a San

Bernardino County sales-tax measure for transportation projects.

In the 2014-2015 fiscal year, SanBAG estimates spending up to \$25 million on the Redlands Rail Project for capital projects, the final design and procuring vehicles, said Mitch Alderman, director of transit and rail programs.

Overall, the Redlands project is estimated to cost between \$200 million and \$250 million, he said.

Funding for the Gold Line extension is now expected to come from Montclair, keeping the project moving forward, Eaton said.

The Montclair City Council is expected to discuss a proposal to loan SanBAG \$3 million at its meeting on Tuesday, Eaton said.

The city is proposing loaning \$2.16 million to the Gold Line Construction Authority on behalf of SanBAG to conduct the preliminary engineering study and get clearance for a federal environmental study. Montclair would direct another \$840,000 to SanBAG for oversight purposes, Alderman said. On Thursday, the Commuter Rail and Transit subcommittee recommended that the board at its March 5 meeting review the terms of the proposal from Montclair.

Last month, the Commuter Rail and Transit subcommittee recommended the Redlands Passenger Rail Project be given priority. But the decision was met with opposition from backers of the Gold Line project.

## **Press Enterprise**

### **Friday, February 14, 2014**

"Riverside buses are awesome," said Winder, a 38-year-old nurse. "They're safe. People make comments (like) 'Oh, the crazies are on there.' I don't think they're any crazier than the people out there driving."

While more people are riding buses in Riverside County, the agency overseeing buses in San Bernardino County reported a slight drop in ridership last year.

Ridership fell 2.29 percent in 2013 compared to 2012, said Wendy Williams, director of marketing for Omnitrans. Ridership in 2012 was the highest since 2004, she said.

Williams attributed the drop in part to high unemployment and the fact that Omnitrans had no new service or service expansions in 2013.

Ridership of Route 215 express service and OmniGo community shuttle routes is growing, and Omnitrans expects ridership to go up later this year with the launch of the sbX rapid transit line, Williams said.

Formed in 1975, the Riverside Transit Agency is an alliance of local governments that coordinates transit service for a roughly 2,500-square-mile area in western Riverside County. It runs more than 40 bus routes and has a fleet of more than 160 buses.

Officials credited the agency's rise in ridership to a number of factors, including a stronger economy creating more commuters and more outreach to seniors and the disabled.

A big boost comes from Riverside college students, said agency spokesman Brad Weaver. The agency's Go-Pass and U-Pass programs allow students with valid IDs at UC Riverside, RCC, California Baptist University, La Sierra University and Mt. San Jacinto College to ride free.

UC Riverside is paying the agency an estimated \$280,000 this fiscal year so its students can ride for no charge.

Free rides were originally offered just to students in 2006, but faculty and staff were added in recent years, said Irma Henderson, UC Riverside's alternative transportation program manager. Increased bus ridership helps the university because it frees up parking spaces and helps UC Riverside's neighbors because there's less traffic, she said.

RCC students pay for the buses through a mandatory transportation fee of \$5.50 per semester for full-time students, said RCC spokeswoman Diana Meza.

Weaver said the agency is enhancing bus service by using bigger buses, boosting the frequency of service on some routes and offering later service. Newer buses have power outlets, USB charging ports, more comfortable seating and luggage racks to make them more attractive to riders, he said.

In addition, the agency hopes to offer Wi-Fi service on all buses, not just commuter buses, Weaver said. Future plans include upgrading bus shelters at the Moreno Valley Mall and a new express service in Riverside, an agency news release read.

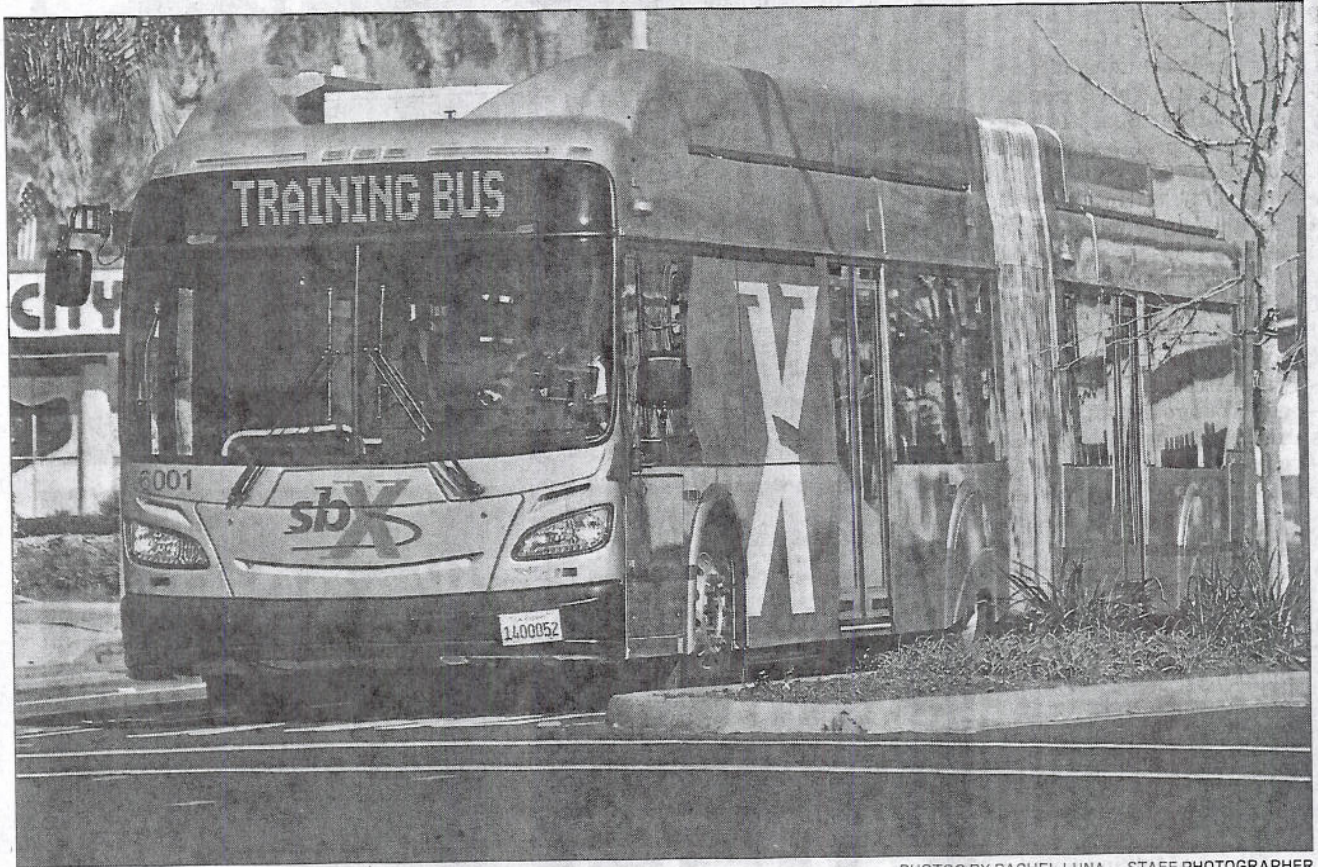
The agency also is looking at routes that could benefit from larger buses and later service, Weaver said. The routes being looked at for enhancements were not available.



KURT MILLER/STAFF PHOTOGRAPHER

Passengers disembark an RTA bus on Canyon Crest Drive at UCR on Tuesday, February 11, 2014. Bus ridership is at an all-time high, according to the Riverside Transit Agency.

TRANSPORTATION



PHOTOS BY RACHEL LUNA — STAFF PHOTOGRAPHER

An sbX training bus moves along E Street on Thursday in San Bernardino. The testing phase for sbX buses has begun for the planned April start of the rapid transit line.

## Bus testing also means an awareness of new sbX rules

**By Ryan Hagen**  
*ryan.hagen@langnews.com*  
*@sbcitynow on Twitter*

**SAN BERNARDINO »** Buses are now on the road every day as part of testing for the sbX bus rapid transit line, meaning drivers have to familiarize themselves with some significant changes to the roads along the route and particularly to the section with a dedicated lane that only sbX may use.

The 5.4-mile stretch with dedicated bus lanes extends from E Street just north of 10th Street to the intersection of Tippecanoe Avenue and Hospitality Lane, and is marked with double yellow lines and signs reading "sbX bus only."

The minimum fine for drivers entering the dedicated lane is \$341, according to Omnitrans, which is in charge of the bus line.

U-turns and left turns are also lim-

ited by signs saying they aren't allowed at certain interchanges.

And the lessons aren't just for motorists: Pedestrians may also be tempted to use the lane as a haven as they jaywalk, but that's not allowed.

Omnitrans created a 79-second video emphasizing the safety basics: [http://youtu.be/7ckpCev\\_Mvo](http://youtu.be/7ckpCev_Mvo).

Passenger service is still scheduled to start at the end of April.



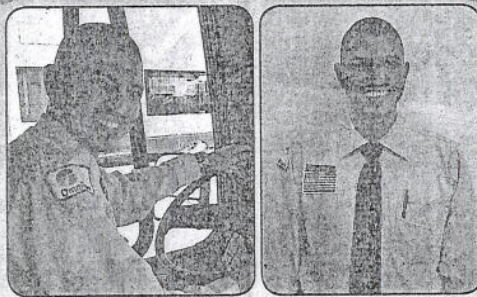
An sbX training bus is tested on Thursday along E Street in San Bernardino. The minimum fine for drivers entering the dedicated lane is \$341, according to Omnitrans.

# *The Sun*

## *February 18, 2014*

*At Omnitrans, we have environmentally friendly buses,  
an award-winning safety record, and an 83% percent customer satisfaction rating.  
But those aren't the only things that make us proud.*

*Omnitrans Congratulates 2013 Employee of the Year*  
**Benito Zavalza**



*Coach Operator Benito Zavalza has been selected as the agency's 2013 Employee of the Year from all employees nominated by their peers for consistently superior work. His achievements:*

*Benito engages his passengers in a friendly, professional, courteous and kind manner. He takes the time to answer questions and goes out of his way to provide assistance, while at the same time keeping his route on time.*

*When faced with potentially volatile situations, Benito has skillfully diffused problems with his calm demeanor and excellent interpersonal skills.*

*While driving his routes, Benito consistently provides viable recommendations for improvements from reporting potholes to suggesting possible bus bench locations.*

*Benito has been a star employee by meeting and exceeding all performance standards and providing superior customer service to passengers.*

***Thanks, Benito. Your success makes ours possible.***



**1-800-9-OMNIBUS (1-800-966-6428)**

**[www.omnitrans.org](http://www.omnitrans.org)**

# Highland Community News

Thursday, February 20, 2014



## NEWS

Print | E-mail | Comment (No comments posted.) | Rate | Text Size

### CEO Graham No Longer Interim

Published: Friday, February 14, 2014 4:16 PM PST

The Omnitrans Board appointed Scott Graham as Omnitrans CEO/General Manager, effectively eliminating "interim" from his title. Graham joined Omnitrans in 2006 as Director of Operations. He was appointed as interim CEO/General manager in June 2013.

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**Metro**  
**Thursday, February 20, 2014**



# THE SUN

TRANSPORTATION SAFETY

## Bus testing also means an awareness of new sbX rules



*An sbX training bus moves along E Street on Thursday in San Bernardino. The testing phase for sbX buses has begun for the planned April start of the rapid transit line. Photos by Rachel Luna — Staff photographer*



*An sbX training bus is tested on Thursday along E Street in San Bernardino. The minimum fine for drivers entering the dedicated lane is \$341, according to Omnitrans.*

By [Ryan Hagen, The Sun](#) POSTED: 02/16/14

SAN BERNARDINO >> Buses are now on the road every day as part of testing for the sbX bus rapid transit line, meaning drivers have to familiarize themselves with some significant changes to the roads along the route and particularly to the section with a dedicated lane that only sbX may use.

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U-turns and left turns are also limited by signs saying they aren't allowed at certain interchanges.

And the lessons aren't just for motorists: Pedestrians may also be tempted to use the lane as a haven as they jaywalk, but that's not allowed.

Omnitrans created a [79-second video emphasizing the safety basics](#).

Passenger service is still scheduled to start at the end of April.

ITEM #       F1      

**DATE:** March 5, 2014

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

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

**SUBJECT: CEO/GENERAL MANAGER'S REPORT**

The last Federal Transit Administration (FTA) Quarterly meeting before sbX revenue service begins was held February 25, 2014. Expand.

Also on February 25, the Groundbreaking Event for the San Bernardino Transit Center was held. FTA's Region IX Director Leslie Rogers, along with Board Chair Alan Wapner, spoke at the event. Expand?

To address reports of drivers hitting the curb-like barriers installed at various locations along the sbX corridor, Omnitrans has installed lane delineators (candlesticks) with reflection tape, as shown in the attached photographs.

In response to Board direction as a result of public comments made at the February Board Meeting, staff is actively gathering historic and current regulation compliance information on LNG/CNG risk management and environmental public health study results. Once compiled, this information will be presented to the Operations and Safety Committee later in the month.

I attended the Transit CEOs Seminar presented by the American Public Transportation Association, February 9-11, 2014. A few key session topics included: legislative strategies for the next surface transportation authorization, identifying and preventing attention-related errors and accidents in public transportation, and trends in labor relations.

### **MONTHLY STATISTICS**

Ridership for January 2014 was 1,338,237 to 1,332,191 in January 2013. This is a .5 percent increase from January of last year.

Year-to-date ridership through January 2014 was 9,264,625, which is a decrease of 2.4% percent from last year-to-date. Fixed route ridership decreased by 233,293 passengers year-to-date. Ridership on Access increased by 2,462 passengers, and OmniLink decreased by 653 passengers. OmniGo ridership was 91,570 year-to-date, which is up 17.3 percent.

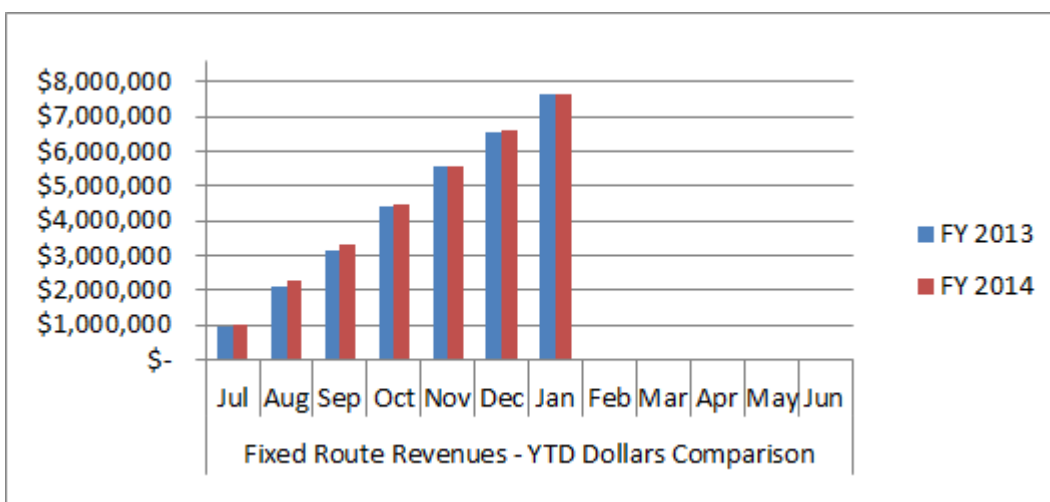
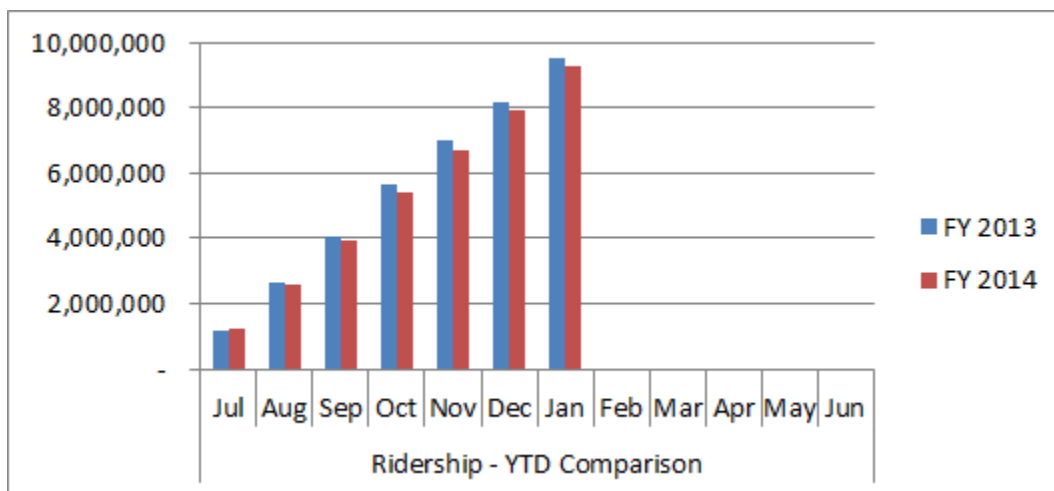
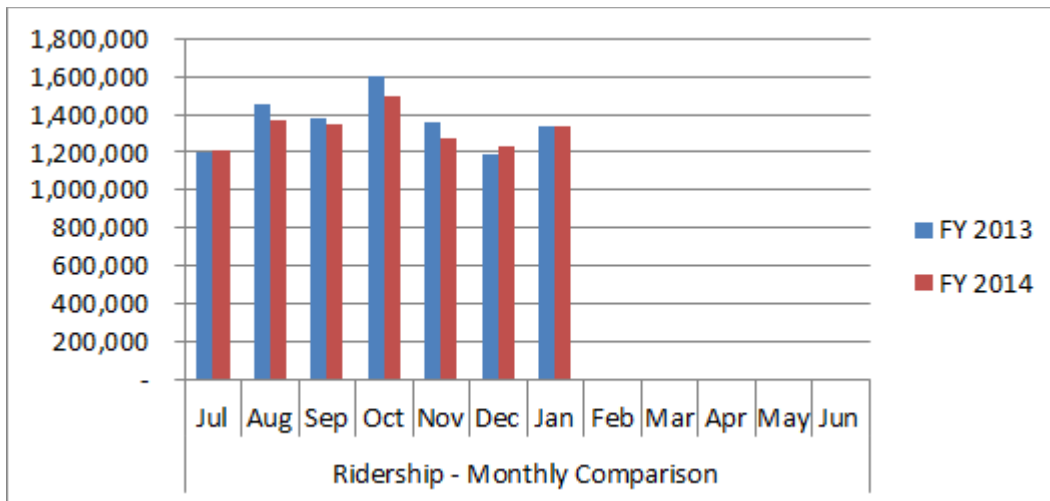
Year-to-date fixed route revenue through January 2014 was \$7,663,541 compared to \$7,676,430 last year, which is an increase of .33 percent.

On-time performance for January 2014 was 87.18 percent.

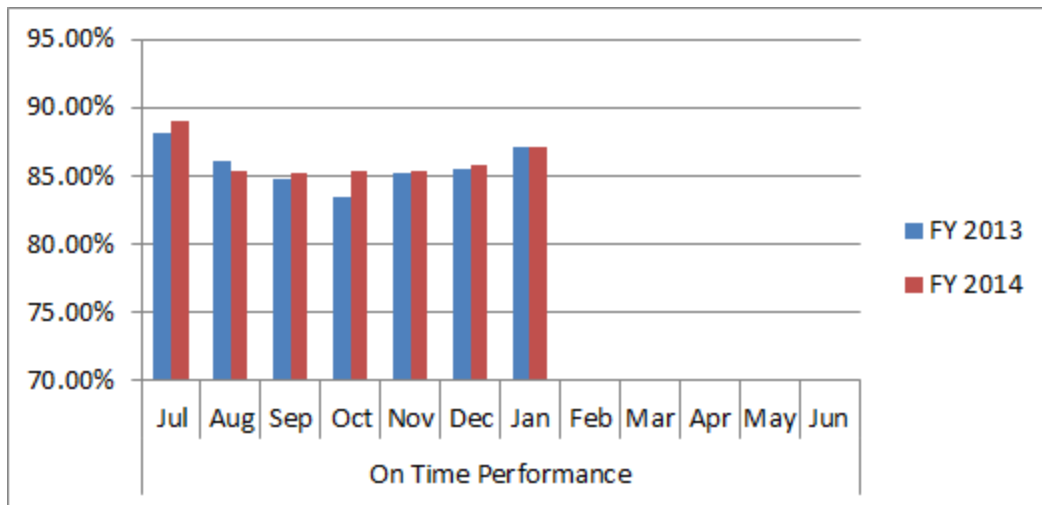
Outreach events in January included: sbX Media Tour, Omni Night at Ontario Reign, Ontario Fury Game, San Bernardino County Brown Bag Lunch Presentation, Travel Training presentations at Rolling Start and Indian Springs High School, and the Loma Linda Chamber Installation Dinner.

PSG:VD

## CEO/General Manager Report – January 2014



## CEO/General Manager Report – January 2014







ITEM #           F2          

**DATE:** March 5, 2014

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

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

**SUBJECT: OPERATIONS SAFETY & SECURITY INFORMATIONAL BRIEF**

**FORM MOTION**

Receive and file Operations Safety and Security Informational Brief.

**BACKGROUND**

An overview of Omnitrans' Operations Safety & Security practices, past and present, was presented to the new Operations and Safety Committee in January and the Executive Committee in February.

Both committees agreed that the information should be presented to the full Board of Directors. At direction of the Board Chair, attached is an abridged copy of the PowerPoint presentation presented to both Committees. The only information removed from that provided to the Committees is the history of technology that existed at Omnitrans since 2001. This was removed due to meeting time constraints.

**CONCLUSION**

A brief presentation will be provided at the Board Meeting.

PSG:VD

# OPERATIONS SAFETY AND SECURITY

Presented to Board of Directors  
March 5, 2014

# IMPROVEMENTS & ENHANCEMENTS

Safety & Security

Technology

Field Operations

# SAFETY & SECURITY

▣ Retained Secure Strategies International to conduct security risk/vulnerability assessment and best practice recommendations. Final Report included:

- Review incidents over past 2-years
- Determine adequacy of protection of drivers
- Review existing security systems and components
- Interview drivers and/or union representatives
- Review of recent fatality & other Incidents w/Law Enforcement

# SAFETY & SECURITY



Video Surveillance  
of Facilities

CCTV Workstation

Platform Stations  
Video/PA/VMS

Blue Phone

MOUs, Policies,  
Training w/Cities

Onboard Checks

Rear facing W/C

Labels on Video  
CDs

# Present / Projected 2014

Crestline Tower

RTT / Data

RTT / Data

Radio / Mux  
Upgrades

## OmniTrans



- Trap 8-13
- Viewing Station

Fiber

## sbX Station



- PA
- P-Tel
- E-Tel
- E-Signs
- Live Video
- Wifi
- TVM

## Paratransit



## Fixed Route



## sbX



- Pass. Wifi
- sbX APC's
- TSP Int.
- Next Trip
- MDT Upgrd.
- FS Video

# FIELD OPERATIONS

## Coach Operator Training



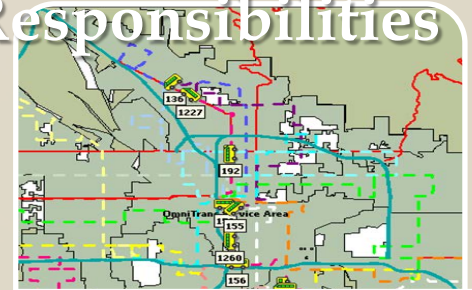
sbX BRT CO Staffing  
Classroom Instruction  
Articulated Coach Familiarization  
Articulated Coach Behind-The-Wheel Driving  
Driving the Corridor  
Precision Docking  
Intersections/Priority Signalization  
Pax/Fares/Bikes/AD A Access  
Maneuvering Skills

## Field Supervisor Responsibilities



Monitoring  
Actively Riding BRT System  
Psger Disturbances  
Psger Fare Checks  
Breakdown within Corridor  
Equipment Road Calls  
Malfunctioning TSP  
Accidents/Incidents  
Covert Alarm  
Daily Platform Checks

## Dispatch Responsibilities



Monitoring  
Covert Alarm  
Creating Detours  
Unplanned Detour  
Service Recovery  
Vehicle Breakdown  
Emergency Events  
Communication  
Radio/Text Procedures

ITEM # F3

**DATE:** March 5, 2014

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

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

**FROM:** Jennifer M. Sims, Director of Procurement

**SUBJECT: EXECUTE CHANGE ORDER NO. 4 TO CONTRACT OPS10-1  
ONBOARD VIDEO SURVEILLANCE SYSTEM (OBVSS)**

### **FORM MOTION**

Authorize the CEO/General Manager to execute Change Order No. 4 to Contract OPS10-1 to System Development Integration, LLC (SDI), of Chicago, IL, to extend the Onboard Video Surveillance System (OBVSS) Warranty and Maintenance for Omnitrans' forty-foot fixed-route fleet of buses through March 9, 2015, in an amount of \$111,600, increasing the Contract total amount to \$2,165,579, and the authority to extend the warranty and maintenance for up to two additional years, extending services to no later than March 9, 2017, in an amount not to exceed \$260,000, for a total not-to-exceed amount of \$371,600, increasing the Contract total not-to-exceed amount to \$2,425,579.

### **BACKGROUND**

In February 2010, Omnitrans' Board of Directors approved Contract OPS10-1 with SDI to install and maintain the OBVSS on its fleet of forty-foot buses. The warranty and maintenance services of the system hardware and software, phone support, on-site support, and training, will expire March 9, 2014. The system has proven to be invaluable in providing photographic evidence in investigating accidents, criminal prosecutions and civil claims. For these reasons, it is essential to keep the system in good operating order.

In accordance with FTA Circular 4220.1F, Section VI-17, procurement by noncompetitive proposals may be used when the manufacturer is the sole provider of the items compatible with existing equipment/systems and when the equipment/systems are not interchangeable with similar parts and equipment from other manufacturers. The hardware and software are solely manufactured and supported by SDI, in partnership with Verint and TransIT. Component repair and replacement for the OBVSS onboard system components are only available through SDI.

SDI will provide quotes on an annual basis. Price of \$111,600 for the first year is deemed fair and reasonable as it is less than the independent cost estimate of \$120,000. Due to equipment

wear and tear, Omnitrans estimates that the second and third years will increase approximately ten percent each year, for an estimated amount not to exceed \$260,000.

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: 505170

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

### **CONCLUSION**

By proceeding with this extension of the warranty/maintenance, Omnitrans stands to benefit both from increased passenger and employee protection, and risk mitigation provided by the OBVSS.

PSG:JMS:CV

 <b>OmniTrans</b> Omnitrans STANDARD CONTRACT 1700 West Fifth Street San Bernardino CA 92411	<input type="checkbox"/>	New	Change Order No. 4				Contract Number OPS10-1
	<input checked="" type="checkbox"/>	Change					
	<input type="checkbox"/>	Cancel					
	Omnitrans Department Operations			Dept. No. 1100		Project On-Board Cameras Video Surveillance System	
	Omnitrans Procurement Representative Christine Van Matre Contract Administrator			Telephone 909-379-7122		Contract Amount \$2,165,579	
	Contract Type: <b>Construction</b>						
		Contract Start Date 7/01/2006	Contract End Date 3/09/2015	Previous Amount \$2,053,979	Change Order Amount \$111,600		

THIS CONTRACT is entered into in the State of California by and between Omnitrans, a Joint Powers Authority; hereinafter called Omnitrans, and

Name

SDI (System Development.Integration LLC)

hereinafter called Contractor

Address

33 West Monroe, Suite 400

Chicago IL 60603

Telephone

312-580-7585

Federal ID No.

36-4115389

1. This Change Order No. 04 dated \_\_\_\_\_ is contingent upon the language contained in Section 2.0, *General Terms and Conditions*, Article 20, "*Modifications in the Specifications and Scope of Work*" of the above-referenced agreement.
2. This Change Order No. 04 is further contingent on the following items:
  - A. Adherence to all provisions of the current AGREEMENT; and
  - B. Compliance with the terms of this change order.
3. This Change Order No. 04 adds additional work as documented and shown below:
  - A. Warranty and maintenance services as described in SDI' proposal dated January 31, 2014 and extend the contract through March 9, 2015.
4. The aforementioned changes result in a total cost increase of \$111,600, for a total amended not-to-exceed contract value of \$2,165,579.
5. **Delete:**  
 Contract Section 3, Required Contract Provisions for ARRA is deleted in its entirety.
6. **Add:**  
 Services as described in No. 3.A
7. **Additional Time Allowed:**  
 Extension to contract through March 9, 2015

8. **Additional Costs:**

\$111,600

9. **Net Contract Effect:**

Original Contract Amount Not to Exceed	\$1,963,586
Net Change Due to Previous Change Orders	\$ 90,393
Net Change Due to This Change Order Not to Exceed	\$111,600
Contract Value as Amended Not to Exceed	\$2,165,579

IN WITNESS WHEREOF, Omnitrans and the Contractor have each caused this Contract to be subscribed by its respective duly authorized officers on its respective behalf.

**OMNITRANS**

**SDI**  
**(System Development.Integration LLC)**

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

\_\_\_\_\_  
James R Boyle, EVP/CFO

Dated \_\_\_\_\_

Dated \_\_\_\_\_

Attachments:

SDI Proposal dated January 31, 2014

DP   
CM 

## SDI Statement of Work/Quote

<b>Date:</b>	January 31, 2014
<b>Name of Client:</b>	Omnitrans
<b>Client Contact:</b>	Scott Graham, Christine VanMatre
<b>Type of Service:</b>	Extended Warranty and Technical Support Services- One (1) Year
<b>SDI Contact:</b>	Mark Moscinski cell: 312.446.1940 mmoscinski@sdienterprises.com
<b>Project Name:</b>	Omnitrans Fixed Route OBVSS

### SCOPE OF SERVICES:

#### **1.0 EXTENDED WARRANTY - GENERAL**

1.1 This extended warranty shall cover all onboard, central, and wireless communication system equipment (hardware and software) that was supplied by System Development Integration, LLC ("SDI") and its associated subcontractors during the original On-Board Camera Video Surveillance System Project (Contract OPS10-1).

1.2 This extended warranty period shall start on March 10, 2014 and run for a base period of one (1) year, expiring on March 9, 2015. Omnitrans shall also be provided with pricing for two (2) option years beyond the base one (1) year extended warranty contract.

1.3 The SDI shall warrant the equipment and software, including the initial supply of spare components, to: (1) be free from defects in design, material and workmanship, and shall remain in good working order; and (2) function properly and in conformity with this Contract.

1.4 During the warranty period, the SDI shall furnish such materials, labor, equipment, software, documentation, services and incidentals as are necessary to maintain the system in accordance with the warranty.

1.5 The SDI shall provide any software updates, fixes, or version changes during the warranty period.

1.6 In addition to the foregoing warranties, the SDI shall assign to, and shall have the benefit of, any and all sub-contractors and equipment supplier warranties and representations with respect to the equipment provided.

1.7 In its agreements with sub-contractors and equipment suppliers, the SDI shall require that such parties: (1) consent to the assignment of such warranties and representations to Omnitrans; (2) agree that such warranties and representations shall be enforceable by Omnitrans in its own name; and (3) furnish documentation on the applicable warranties to Omnitrans.

1.8 It is recognized that the original manufacturers' or suppliers' warranties may expire before the end of the Warranty Period. The SDI shall therefore provide extended warranties for all such products or equipment (software, hardware, spare parts) and shall assume full responsibility for



replacement or repair for the duration of the Warranty Period, the full cost of which shall be included in the Contract Price.

1.9 The SDI shall provide a single point of contact for all warranty administration during the warranty period.

1.10 The SDI shall warrant to Omnitrans that Omnitrans shall acquire permanent title to all equipment and non-proprietary software provided under the Contract, free and clear of all liens and encumbrances.

## **2.0 SUPPORT**

2.1 The SDI shall provide a problem notification system for the receipt of maintenance service requests. As a minimum, the problem notification system shall be a contact telephone number, providing a single point of contact and accessible Monday to Friday between the hours 9:00AM and 5:00PM (Pacific Standard Time).

2.2 The SDI shall acknowledge the receipt of a maintenance service request within four (4) hours of the current and next business day, indicating that a response has been initiated.

2.3 The total response period, commencing with the SDI acknowledgement that a service request has been received and terminating with the completion of the maintenance service requirements, shall not exceed forty-eight (48) hours.

2.4 If a support firm does not respond within the agreed response timeframe, or when a support firm is not able to provide the needed support, the SDI shall provide supplementary support in accordance with an agreed escalation procedure. The escalation procedure can initially involve telephone support, but may culminate in the SDI providing on-site support if needed.

2.5 The SDI shall be permitted to provide software maintenance services remotely via a provided VPN connection.

## **3.0 REPAIR OR REPLACEMENT OF FAULTY COMPONENTS**

3.1 During the warranty period, the SDI shall repair or replace any faulty components. Any faulty components "replaced" will be replaced by components of the same make/model or an Omnitrans approved alternative. Omnitrans will be responsible for removal of faulty equipment from buses. Omnitrans will initially replace the faulty component with a good component out of Omnitrans spares stock. Omnitrans will ship each faulty component to the SDI (using SDI's RMA procedures), who shall return a new or repaired component within ten (10) business days of originally receiving it.

3.2 If the SDI (or its subcontractors) determines that a returned component is not faulty, Omnitrans shall receive the original component back in working order within ten (10) business days of the SDI originally receiving the returned component.

3.3 All components received back from the SDI will be tested in accordance with the original Acceptance Test Procedures. If the returned parts are found faulty upon return, Omnitrans will return the faulty items to SDI for repair.



3.4 The SDI shall pay all shipping charges to and from, and any duties associated with the repair or replacement of faulty units.

3.5 Returned or replaced components shall be packaged, organized and labeled in the same manner as the original supply of spare components.

3.6 Any necessary documentation, training materials, or drawings resulting from changes or modifications to the system as a result of Warranty service shall be provided to Omnitrans at no additional cost.

3.7 The SDI shall provide and install all applicable software "patches" or updates that become necessary to remedy software faults or "bugs" identified during the Warranty Period, in accordance with the Warranty Plan.

3.8 Maintenance of equipment, software, communications, or other components requiring access to enterprise networks or systems shall be approved by and coordinated with Omnitrans Information Technology Department. Omnitrans shall perform central system maintenance activities on behalf of the SDI with the SDI's guidance and oversight. At no time shall the SDI maintain, reconfigure, modify, or access in any way the enterprise IT network without expressed prior consent of the Project Manager or designee.

**Pricing:**

**Extended Warranty Services, 1 (one) Year.....\$111,600.00**

**Payment for Services**

Extended Warranty services described herein will be invoiced and paid in advance of the annual warranty term of service.

**Other Terms and Conditions**

The services performed by SDI shall be of a professional and workmanlike quality and in accordance with the generally accepted standards of SDI's industry. To the extent legally possible, SDI will pass through to Omnitrans any and all original manufacturer warranties it may have related to the hardware and equipment provided hereunder. EXCEPT AS OTHERWISE PROVIDED HEREIN, SDI EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, ABSENCE OF DEFECTS OR FITNESS FOR A PARTICULAR PURPOSE.



The individual signing below on behalf of each party certifies that he or she has the authority to sign this Services Agreement on behalf of each such party and bind each such party accordingly.

**Acknowledged and Accepted:**

Omnitrans agrees to the terms and conditions set forth above. SDI will proceed with installation services upon receipt of a fully executed copy of this Services Agreement (email to [mmoscinski@sdienterprises.com](mailto:mmoscinski@sdienterprises.com) or fax to 847.620.2316).

OMNITRANS

SYSTEM DEVELOPMENT.INTEGRATION, LLC

Signature

Signature

Print Name and Title

Print Name and Title

Date

Date

ITEM #       F4      

**DATE:** March 5, 2014

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

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

**FROM:** Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE AWARD – CONTRACT MNT14-81, COMPRESSED  
NATURAL GAS (CNG) FUEL CYLINDER REPLACEMENT**

**FORM MOTION**

Authorize the CEO/General Manager to award Contract MNT14-81 to Complete Coach Works, Inc., of Riverside, CA, for the provision of CNG Fuel Cylinder Replacement for eleven buses for a contract not-to-exceed amount of \$462,117.70, plus a ten percent contingency of \$46,212, and a 3.27% Cost Allocation Plan (CAP) of \$16,623, for a total not-to-exceed amount of \$524,952.70.

**BACKGROUND**

Eleven model year 2000 New Flyer SR585 buses will become non-serviceable due to the CNG cylinders expiring September 2014. Once expired, it is unlawful to add fuel to the cylinders. In order for Omnitrans to continue operating the SR585 buses, the CNG fuel cylinders must be replaced as required by the United States Department of Transportation, Code of Federal Regulations Title 49: Federal Motor Vehicle Safety Standards and California Code of Regulations Title 13.

On November 6, 2013, Omnitrans' Board of Directors authorized the release of Request for Proposals RFP-MNT14-81. Notices were published in two local newspapers of general circulation and posted on Omnitrans' online bidding system. Two proposals were received by the December 17, 2013 deadline. Both were deemed responsive and evaluated in accordance with the criteria set forth in the RFP. The following firms ranked from highest to lowest:

<b>Criteria</b>	<b>Points Possible</b>	<b>Complete Coach Works</b>	<b>McCray's Diesel Repair and Body Shop</b>
Responsiveness to Requirements of Scope	20	16.3	17.0
Work Plan	40	34.3	35.0
Experience	25	23.3	21.0
Price	15	15.0	14.9
<b>TOTAL</b>	<b>100</b>	<b>88.9</b>	<b>87.9</b>

Complete Coach Works offered the best value, responsive and responsible proposal that met the requirements of the RFP and offered the lowest price. The contract price of \$462,117.70 is deemed fair and reasonable as it is within 3% of the independent cost estimate of \$450,104.00.

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

### **FUNDING SOURCES**

Funding for this purchase is as follows:

<b>FUNDING</b>	<b>GRANT</b>	<b>YEAR</b>	<b>PROJECT NAME</b>	<b>INTERNAL ORDER</b>	<b>AMOUNT</b>
FTA	CA-90-Y602	2008	CNG Fuel Cylinder Replacement	A0840101F	\$352,886.00
FTA	CA-95-X124	2011	CNG Fuel Cylinder Replacement	A1120101Q	\$88,222.00
STA	12-09-OMN-B	2012	CNG Fuel Cylinder Replacement	A0840101S	\$83,844.70
<b>Total</b>					<b>\$524,952.70</b>

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

### **CONCLUSION**

By proceeding with this project, Omnitrans will extend the useful life of the eleven buses and have the ability to keep them in service.

PSG:JMS:CV



## CONTRACT AGREEMENT

between

Complete Coach Works  
1863 Service Court  
Riverside CA 92507

(hereinafter "CONTRACTOR")  
Telephone: 951-684-9585  
Email: macy@completecoach.com

And

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

### CONTRACT DOCUMENTS

**CONTRACT NO.**  
**MNT14-81**

**Compressed Natural Gas (CNG) Fuel  
Cylinder Replacement**

Contract Amount: \$462,117.70

#### Omnitrans Project Manager:

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

#### Contract Administrator:

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

## TABLE OF CONTENTS

1.	SCOPE OF WORK.....	3
2.	PERIOD OF PERFORMANCE.....	3
3.	COMPENSATION.....	4
4.	INVOICING AND PAYMENT.....	4
5.	AUDIT AND INSPECTION OF RECORDS.....	5
6.	NOTIFICATION .....	5
7.	OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES.....	5
8.	TERMINATION FOR CONVENIENCE .....	7
9.	TERMINATION FOR BREACH OF AGREEMENT .....	7
10.	ASSIGNMENT.....	8
11.	SUBCONTRACTING.....	8
12.	INDEPENDENT CONTRACTOR.....	8
13.	INSURANCE .....	9
14.	INDEMNITY.....	9
15.	REVISIONS.....	9
16.	RIGHTS IN TECHNICAL DATA .....	10
17.	OWNERSHIP OF REPORTS AND DOCUMENTS.....	10
18.	OWNERSHIP RIGHTS.....	11
19.	WORK FOR HIRE .....	11
20.	SUBMITTAL OF CLAIMS BY CONTRACTOR.....	12
21.	EQUAL OPPORTUNITY.....	12
23.	NOTIFICATION OF EMPLOYMENT OF OMNITRANS BOARD MEMBERS/ALTERNATES AND EMPLOYEES .....	13
24.	DISQUALIFYING POLITICAL CONTRIBUTIONS .....	13

25.	COMPLIANCE WITH LAW .....	13
26.	COMPLIANCE WITH LOBBYING POLICIES .....	13
27.	PUBLIC RECORDS ACT .....	13
28.	WAIVER/INVALIDITY .....	14
29.	FORCE MAJEURE .....	14
30.	CONFIDENTIALITY .....	14
31.	CONTRACTOR'S INTERACTION WITH THE MEDIA AND THE PUBLIC .....	15
32.	GOVERNING LAW .....	15
33.	MODIFICATIONS TO AGREEMENT .....	15
34.	PRECEDENCE .....	16
35.	ENTIRE AGREEMENT .....	16

ATTACHMENT A - SCOPE OF WORK

ATTACHMENT B – REGULATORY REQUIREMENTS

This Agreement is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2014 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and Complete Coach Works (hereinafter referred to as "CONTRACTOR").

## **RECITALS**

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

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

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

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

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

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

This Agreement shall commence on \_\_\_\_\_, and shall continue in full force and effect through \_\_\_\_\_ unless earlier terminated or extended as provided in this Agreement.

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 Paragraphs 8 and 9. 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. COMPENSATION

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

<u>Description</u>	<u>Unit Cost</u> <u>per bus</u>	<u>Quantity</u>	<u>Total</u> <u>Amount</u>
Labor & Parts	\$39,877.00	11	\$438,647.00
Sales Tax 8.25%			\$23,470.70
Total			\$462,117.70

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Four Hundred Sixty-Two Thousand, One Hundred Seventeen Dollars and Seventy Cents (\$462,117.70), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

### 4. INVOICING AND PAYMENT

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

CONTRACTOR shall submit invoices in duplicate to:

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

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

- Contract number
- Purchase Order number
- Invoice number
- Description of delivery
- Delivery Date
- Total quantity delivered
- Unit Price, extended price and applicable taxes
- Information as requested by OMNITRANS

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

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

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

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

## **6. NOTIFICATION**

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

To OMNITRANS:

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

To CONTRACTOR:

Complete Coach Works  
1863 Service Court  
Riverside, CA 92507  
Attn: Macy Neshati, VP Sales & Mktg

## **7. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES**

### **A. OMNITRANS' Project Manager**

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

Project Manager: Mike Bonacio.

- 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>
Macy Neshati	Project Manager
Chuck Barnes	VP of Production
Christopher Cabrinha	System Designer
Wayne Nelson	Project Supervisor
Guy Wright	Quality Control

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

OMNITRANS awarded this Agreement to CONTRACTOR based on OMNITRANS' confidence and reliance on the expertise of CONTRACTOR's key personnel described above. CONTRACTOR shall

not reassign key personnel or assign other personnel to key personnel roles until CONTRACTOR obtains prior written approval from OMNITRANS.

## **8. TERMINATION FOR CONVENIENCE**

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

## **9. TERMINATION FOR BREACH OF AGREEMENT**

- A. If CONTRACTOR fails to perform any of the provisions of this Agreement or so fails to make progress as to endanger timely performance of this Agreement, OMNITRANS may give CONTRACTOR written notice of such default. If CONTRACTOR does not cure such default or provide a plan to cure such default which is acceptable to OMNITRANS within the time permitted by OMNITRANS, then OMNITRANS may terminate this Agreement due to CONTRACTOR's breach of this Agreement.
- B. If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then OMNITRANS may immediately terminate this Agreement.
- C. If CONTRACTOR violates Section 26, Compliance with Lobbying Policies, of this Agreement, then OMNITRANS may immediately terminate this Agreement.
- D. In the event OMNITRANS terminates this Agreement as provided in this Section, OMNITRANS may procure, upon such terms and in such manner as OMNITRANS may deem appropriate, Work similar in scope and level of effort to those so terminated, and CONTRACTOR shall be liable to OMNITRANS for all of its costs and damages, including, but not limited, any excess costs for such Work.
- E. All finished or unfinished documents and materials produced or procured under this Agreement shall become OMNITRANS' property upon date of such termination.

- F. If, after notice of termination of this Agreement under the provisions of this Section, it is determined for any reason that CONTRACTOR was not in default under the provisions of this Section, or that the default was excusable under the terms of this Agreement, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 8, Termination for Convenience.
- G. The rights and remedies of OMNITRANS provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

## 10. ASSIGNMENT

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

## 11. SUBCONTRACTING

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

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

## 12. INDEPENDENT CONTRACTOR

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

### 13. INSURANCE

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

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

Additional Insured: Omnitrans, its officers, officials, employees, agents, and volunteers.

### 14. INDEMNITY

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

### 15. REVISIONS

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

#### Price Adjustments:

- A. Any change in the contract that causes an increase or decrease in cost to Omnitrans, or the time required for the performance of the contract, must be approved as prescribed herein.
- B. An equitable adjustment in the compensation and schedule will be made upon an approved Change Order.
- C. Contractor shall be liable for all costs resulting from, or for satisfactorily correcting, any and all unauthorized specification changes not properly ordered by written modification to the contract.
- D. Except as otherwise expressly provided in the Contract, when costs are a factor in any determination of a contract price adjustment, such costs shall be in accordance with the applicable cost principles of Subpart 31.2 of the Federal Acquisition Regulations (*FAR*) in effect at the onset of the Contract.

#### **16. RIGHTS IN TECHNICAL DATA**

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

#### **17. OWNERSHIP OF REPORTS AND DOCUMENTS**

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

## **18. OWNERSHIP RIGHTS**

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

## **19. WORK FOR HIRE**

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

## **20. SUBMITTAL OF CLAIMS BY CONTRACTOR**

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

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

## **21. EQUAL OPPORTUNITY**

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

## **22. STANDARD OF PERFORMANCE**

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

**23. NOTIFICATION OF EMPLOYMENT OF OMNITRANS BOARD MEMBERS/ALTERNATES AND EMPLOYEES**

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

**24. DISQUALIFYING POLITICAL CONTRIBUTIONS**

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

**25. COMPLIANCE WITH LAW**

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

**26. COMPLIANCE WITH LOBBYING POLICIES**

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

**27. PUBLIC RECORDS ACT**

- A. All records, documents, drawings, plans, specifications and other material relating to conduct of OMNITRANS' business, including materials

submitted by CONTRACTOR in its proposal and during the course of performing the Work under this Agreement, shall become the exclusive property of OMNITRANS and may be deemed public records. Said materials may be subject to the provisions of the California Public Records Act. OMNITRANS' use and disclosure of its records are governed by this Act.

- B. OMNITRANS will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act, including interpretations of the Act or the definitions of trade secret, confidential or proprietary. OMNITRANS will accept materials clearly and prominently labeled "TRADE SECRET" or "CONFIDENTIAL" or "PROPRIETARY" as determined by CONTRACTOR. OMNITRANS will endeavor to notify CONTRACTOR of any request of the disclosure of such materials. Under no circumstances, however, will OMNITRANS be liable or responsible for the disclosure of any labeled materials whether the disclosure is required by law or a court order or occurs through inadvertence, mistake or negligence on the part of OMNITRANS or its officers, employees and/or contractors.
- C. In the event of litigation concerning the disclosure of any material submitted by CONTRACTOR, OMNITRANS' sole involvement will be as a stake holder, retaining the material until otherwise ordered by a court. CONTRACTOR, at its sole expense and risk, shall be responsible for prosecuting or defending any action concerning the materials, and shall defend, indemnify and hold OMNITRANS harmless from all costs and expenses, including attorneys' fees, in connection with such action.

## **28. WAIVER/INVALIDITY**

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

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

## **29. FORCE MAJEURE**

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

## **30. CONFIDENTIALITY**

CONTRACTOR agrees that for and during the entire term of this Agreement, any information, data, figures, records, findings and the like received or generated by

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

### **31. CONTRACTOR'S INTERACTION WITH THE MEDIA AND THE PUBLIC**

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

### **32. GOVERNING LAW**

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

### **33. MODIFICATIONS TO AGREEMENT**

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

**34. PRECEDENCE**

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, including Attachment A, Scope of Work and Attachment B, Regulatory Requirements; (2) provisions of RFP-MNT14-81 and (3) CONTRACTOR's proposal dated December 18, 2013.

**35. 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

COMPLETE COACH WORKS

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

\_\_\_\_\_  
Dale Carson  
Owner/President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Federal Tax I.D. No.87-0807646

DP 

CM 

**Attachment A – Scope of Work**  
**MNT14-81**  
**Compressed Natural Gas (CNG) Fuel Cylinder Replacement**

**1. OVERVIEW**

- 1.1. Contractor shall remove, install, inspect and certify compressed natural gas (CNG) cylinders on eleven (11) forty-foot (40') transit buses. Replacements are required due to the impending expiration of the cylinders in September 2014. Replacement tasks shall include, but not limited to sixty-six (66) cylinders, hardware, soft parts, inspection and system certification.

**2. CONFORMANCE**

- 2.1. Contractor shall conform to these technical specifications.
- 2.2. Contractor shall not omit any unit, part or detail which makes the bus complete and ready for service, even though such part or detail is not mentioned in these specifications.
- 2.3. All units or details not specified shall be the manufacturer's standard units.
- 2.4. In any case, Contractor shall adhere to the units listed in its technical proposal.
- 2.5. No substitution or change is permitted without the prior written consent of Omnitrans.

**3. LEGAL REQUIREMENTS**

- 3.1. The bus shall meet all applicable Federal Motor Vehicle Safety Standards (FMVSS), California Code of Regulations Title 13 (CCR Title 13), and American National Standards Institute Natural Gas Vehicle 2-2007 standard (ANSI NGV2 2007), Compressed Gas Association (CGA) and National Fire Protection Association (NFPA) regulations.
  - 3.1.1. Contractor shall certify compliance of all rules and regulations outlined in section 2.1, and ensure those rules and regulations are currently in force, and if not, refer to and apply rules and regulations in force at the time of commencement of work.
- 3.2. The manufacturer shall comply with all other applicable Federal, state and local regulations.
- 3.3. In the event of any conflict between the requirements of these specifications and any applicable legal requirement, then the legal requirement shall prevail.
- 3.4. Contractor shall provide Omnitrans with verification of compliance to the regulations and requirements of these specifications during installation design reviews to be conducted prior to installation on the first bus.

**4. ABBREVIATIONS**

- 4.1. CCR: California Code of Regulations

- 4.2. CGA: Compressed Gas Association
- 4.3. CNG: Compressed Natural Gas
- 4.4. CSA Group: Canadian Standards Association
- 4.5. DGE: Diesel Gallon Equivalent
- 4.6. FMVSS: Federal Motor Vehicles Safety Standards
- 4.7. NFPA: National Fire Protection Association
- 4.8. NGV2: Natural Gas Vehicle 2
- 4.9. PRD: Pressure Relief Device
- 4.10. SCF: Standard Cubic Feet

## **5. SCOPE**

- 5.1. Replacement of CNG cylinders.
- 5.2. Work shall be focused on up to eleven (11) buses.
- 5.3. The buses are described as:
  - 5.3.1. Length: 40'
  - 5.3.2. Model Year: 2000
  - 5.3.3. Manufacturer: New Flyer
  - 5.3.4. Bus Model: C40LF
  - 5.3.5. Engine Model: John Deere 6081, 8.1 liter
  - 5.3.6. Current system: Lincoln Composites

## **6. CURRENT CNG STORAGE SYSTEM**

- 6.1. Each cylinder has the ability to contain 3,023 SCF CNG @ 3,600 PSIG.
- 6.2. Each cylinder cradle has the capacity to carry CNG equal to 137.7 DGE.
- 6.3. Each cylinder cradle has the capacity to carry 453.5 water gallons.
- 6.4. Each CNG cradle carries six (6) fuel cylinders.
  - 6.4.1. Lincoln Tuff Shell model number RE36A16-120MG
  - 6.4.2. NGV2 standard

- 6.4.3. DOT type 4
- 6.5. Each cylinder has a Circle Seal threaded PRD
- 6.6. Each cylinder is
  - 6.6.1. 120" in length
  - 6.6.2. 15.7" in diameter
  - 6.6.3. 235 pounds empty
- 6.7. Each cylinder has a Superior 1700 Series Valve (integral check valve and DDC controlled solenoid valve).
- 6.8. All cylinders are installed into a steel cradle assembly.
- 6.9. Fueling receptacles are Sherex model 5000.

## **7. WORK LOCATION AND EQUIPMENT ACCESSABILITY**

- 7.1. Contractor shall be responsible for pick-up and delivery of buses from and to Omnitrans 1700 W. 5<sup>th</sup> Street, San Bernardino, CA 92411.
- 7.2. For purposes of project work process, Omnitrans will allow the Contractor to have possession of two (2) buses at any given period of time.

## **8. DEFUELING AND REFUELING**

- 8.1. Contractor shall be responsible for defueling the bus prior to commencement of work.
- 8.2. Contractor shall be responsible for fueling the bus to 3,600 PSIG in order to test for leaks.
- 8.3. Contractor shall be responsible for a sufficient fuel level in order to return the bus to Omnitrans 1700 W. 5<sup>th</sup> Street, San Bernardino CA, 92411.

## **9. FLEET DEFECT**

- 9.1. A fleet defect is defined as cumulative failures of any kind in the same components in the same or similar application where such items covered by the warranty and such failures occur in the warranty period in the specified proportion of the buses delivered under this contract. For deliveries of over 10 buses, the proportion shall be 20 (twenty) percent.
- 9.2. Contractor shall correct a fleet defect under the warranty provisions defined in "Repair Procedures" (Section 9.3). After correcting the Defect, Omnitrans and the Contractor shall mutually agree to and the Contractor shall promptly undertake and

complete a work program reasonably designed to prevent the occurrence of the same Defect in all other buses and spare parts purchased under this contract. Where the specific Defect can be solely attributed to particular identifiable part(s), the work program shall include redesign and/or replacement of only the defectively designed and/or manufactured part(s). In all other cases, the work program shall include inspection and/or correction of all of the buses in the fleet via a mutually agreed to arrangement.

**9.3. Repair Procedures**

- 9.3.1. Contractor is responsible for all warranty-covered repair work. To the extent practicable, Omnitrans will allow the Contractor or its designated representative to perform such work. At its discretion, Omnitrans may perform such work if it determines it needs to do so based on transit service or other requirements. The Contractor shall reimburse such work.
- 9.3.2. Contractor or its designated representative shall begin work on warranty-covered repairs, within five calendar days after receiving notification of a defect from Omnitrans. Omnitrans shall make the bus available to complete repairs timely with the Contractor repair schedule.
- 9.3.3. Contractor shall provide at its own expense all spare parts, tools, and space required to complete repairs. At Omnitrans option, the Contractor may be required to remove the bus from Omnitrans property while repairs are being affected. If the bus is removed from Omnitrans property, a timely repair process must be diligently pursued by the Contractor's representative.
- 9.3.4. Contractor may request that parts covered by the warranty be returned to the manufacturing plant. The total cost for this action shall be paid by the Contractor. Materials should be returned in accordance with Contractor's instructions.

**10. DELIVERABLES**

- 10.1. Contractor shall furnish and install
  - 10.1.1. Six Compressed natural gas cylinders per bus.
    - 10.1.1.1. Cylinders shall be of dimension in order to
      - 10.1.1.1.1. Meet or exceed the storage capacity of the current storage system.
      - 10.1.1.1.2. Have similar fit and trim as the current CNG storage system in order to fit without restriction or interference in the existing fuel cylinder bay.
  - 10.1.2. New Pressure Relief Devices for each cylinder:
    - 10.1.2.1. Pressure relief devices shall be identical in nature of operation as the current CNG storage system. The PRD's shall be approved by the container's manufacturer.

- 10.1.2.2. Each pressure relief device shall have an identical point of escape as does the current CNG storage system, and each aperture shall be capped to prevent moisture from entering the valve.
- 10.1.3. New solenoid valves for each cylinder:
  - 10.1.3.1. The solenoid valves shall be identical in nature of operation as the current CNG storage system.
- 10.1.4. Cylinder end plug
  - 10.1.4.1. New cylinders shall be fitted with a new end plug.
- 10.1.5. Hardware
  - 10.1.5.1. All hardware that is loosened, removed or otherwise disturbed including hardware for securing the cylinders into the cradles shall be replaced with new hardware. Hardware shall be identical in composition, length, thread pitch, shank length and tensile strength as the OEM hardware on the current CNG storage system.
- 10.1.6. Cylinder insulators
  - 10.1.6.1. All cylinder insulators shall be replaced with new materials.
  - 10.1.6.2. Cylinder insulators shall be identical as the OEM insulators on the current CNG storage system.
- 10.1.7. Fueling Receptacles
  - 10.1.7.1. Each CNG fueling receptacle shall be replaced with a new receptacle.

## **11. ELECTRICAL SYSTEM INTEGRITY AND EXISTING GAS DETECTION SYSTEM COMPONENTS**

- 11.1. Wires, looms and sensors shall be secured using new devices approved by the organizations listed in section 2 of this specification.
- 11.2. The methane detection sensor is located in the center of the fuel cylinder layout.
  - 11.2.1. The sensor shall be installed in the exact location as the current CNG storage system.

## **12. SYSTEM INTEGRITY**

- 12.1. Plumbing components shall not be stressed beyond a neutral position.
- 12.2. If it becomes necessary to modify the original shape and configuration of any plumbing component, the plumbing component shall be fabricated from identical

materials as used in the original CNG storage system and installed in a way not to be stressed beyond a neutral position.

### **13. SYSTEM TESTING AND CERTIFICATION**

- 13.1. Testing and certification shall be performed by a trained and certified CSA Group CNG cylinder inspector.
  - 13.1.1. Contractor shall provide proof of the inspector(s) level of certification, and attach a copy of the documentation to the individual invoices as part of the delivery of buses to Omnitrans.
  - 13.1.2. Individual CSA America Detailed Visual Inspection certificates shall be attached to the individual invoices as part of the delivery of buses to Omnitrans.

### **14. DISPOSAL OF USED CNG CYLINDERS**

- 14.1. Contractor shall destroy and dispose of all used Omnitrans CNG cylinders as prescribed by the laws and regulations by the entities listed in section 2.1.
- 14.2. Contractor shall certify that each cylinder meets the conditions set forth in section 13.1.
- 14.3. Such certification shall
  - 14.3.1. List each cylinder's serial number, the bus number of which the serialized cylinder was removed, the method of destruction for each cylinder, and the disposition of the destroyed cylinder.
  - 14.3.2. The certificates shall list each cylinder on a separate line of the document.
  - 14.3.3. The documents shall be notarized affidavits which illustrate proof of destruction and disposal of each used cylinder.
  - 14.3.4. The documents shall be attached to each individual invoice delivered to Omnitrans.

### **15. PROVISION OF TRAINING AND CERTIFICATION**

- 15.1. Contractor shall make provisions to provide training and certificate administration in order to facilitate CSA Group CNG cylinder certification for up to fourteen (14) individuals:
  - 15.1.1. Training and test proctoring shall be performed by a certified CSA Group instructor and
  - 15.1.2. Certification shall be administered by the CSA Group

- 15.2. Contractor shall not be responsible for the failure of a trainee to achieve certification.

\*End Scope of Work\*

# **ATTACHMENT B**

## **REGULATORY REQUIREMENTS**

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

**ITEM #F4      COMPRESSED NATURAL GAS (CNG) FUEL  
CYLINDER REPLACEMENT**

**ITEM #F5      BATTERIES**

# Attachment B

## REGULATORY REQUIREMENT

### Table of Contents

#### Contents

ADMINISTRATIVE CODE .....	2
DISCRIMINATION .....	2
WHISTLEBLOWER REQUIREMENTS .....	3
PUBLIC RECORDS ACT .....	3
ACCESS TO RECORDS .....	4
FEDERAL FUNDING, INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS, AND FEDERAL CHANGES .....	4
ENERGY CONSERVATION REQUIREMENTS .....	5
CIVIL RIGHTS REQUIREMENTS .....	5
NO GOVERNMENT OBLIGATION TO THIRD PARTIES .....	6
PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.....	7
SUSPENSION AND DEBARMENT.....	7
RECYCLED PRODUCTS .....	8
CLEAN WATER AND CLEAN AIR REQUIREMENTS .....	8
COMPLIANCE WITH FEDERAL LOBBYING POLICY .....	9
BUY AMERICA .....	9
CARGO PREFERENCE .....	10
FLY AMERICA .....	11
CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.....	11
DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26.....	13
ADA ACCESS .....	14
ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM.....	15
TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS .....	16
BONDING REQUIREMENTS .....	18
DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS .....	18
PRIVACY ACT - 5 U.S.C. 552.....	25
TERMINATION 49 U.S.C. Part 18 FTA Circular 4220.1F.....	26
SEISMIC SAFETY REQUIREMENTS 42 U.S.C. 7701 et seq. 49 CFR Part 41 .....	28
BREACHES AND DISPUTE RESOLUTION 49 CFR Part 18 FTA Circular 4220.1F.....	28
VETERANS PREFERENCE .....	29

## **REGULATORY REQUIREMENTS**

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

### **RR-01**

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

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

This Article applies to all contracts.

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

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

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

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

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

### **RR-02**

#### **DISCRIMINATION \***

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

This Article applies to all contracts.

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

#### **RR-03**

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

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

This Article applies to all contracts.

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

#### **RR-04**

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

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

This Article applies to all contracts.

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

## **RR-05**

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

#### **A. Applicability**

This Article applies to all federally funded contracts.

- B. Contractor agrees to provide Omnitrans, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or the FTA's authorized representatives, including any FTA Project Management Oversight Contractor, access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a) 1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- C. If this Contract is for a capital project or improvement (defined at 49 U.S.C. 5302(a) 1) and was entered in to through other than competitive bidding, the Contractor shall make records related to this Contract available to Omnitrans, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- D. Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until Omnitrans, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

## **RR-06**

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

#### **A. Applicability**

This Article applies to all federally funded contracts.

- B. This Contract includes, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008 and revised March 18, 2013 (including any changes), and are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this

Contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Omnitrans requests which would cause Omnitrans to be in violation of the FTA terms and conditions.

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

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

#### **RR-07**

#### **ENERGY CONSERVATION REQUIREMENTS**

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

This Article applies to all federally funded contracts.

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

#### **RR-08**

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

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

This Article applies to all federally funded contracts.

- B. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Contractor shall comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- C. Equal Employment Opportunity

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

## **RR-09**

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

#### **A. Applicability**

This Article applies to all federally funded contracts.

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

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

#### **RR-10**

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

**A. Applicability**

This Article applies to all federally funded contracts.

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

#### **RR-11**

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

**A. Applicability**

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

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

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

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

## **RR-12 RECYCLED PRODUCTS**

### **A. Applicability**

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

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

## **RR-13 CLEAN WATER AND CLEAN AIR REQUIREMENTS\***

### **A. Applicability**

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

**B. CLEAN WATER REQUIREMENTS**

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

**C. CLEAN AIR**

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

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

**RR-14**

**COMPLIANCE WITH FEDERAL LOBBYING POLICY \***

**A. Applicability**

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

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

**RR-15**

**BUY AMERICA \***

**A. Applicability**

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

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

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

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

**RR-16**

**CARGO PREFERENCE\***

**A. Applicability**

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

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

Contractor shall use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.

Contractor shall furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a

rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the Omnitrans (through Contractor in the case of a subcontractor's bill-of-lading.)

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

## **RR-17**

### **FLY AMERICA**

#### **A. Applicability**

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

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

## **RR-18**

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

#### **A. Applicability**

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

- B. Pursuant to the Labor Standards Provisions Applicable to Non-construction Contracts subject to the Federal Contract Work Hours and Safety Standards Act, 40 U.S.C.A. § 327 through 332 as implemented by U.S. Department of Labor regulations, 29 CFR 5.5 (b) and (c) Contractor and Subcontractor's contracting for any part of the Contract work shall comply with the following:

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

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

### Disadvantaged Business Enterprises

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

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

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

- D. Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 7 days after the contractor's receipt of payment for that work from the Omnitrans. In addition, Contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to his contract is satisfactorily completed.

- E. Contractor must promptly notify Omnitrans whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of Omnitrans.

## **RR-20**

### **ADA ACCESS**

#### **A. Applicability**

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

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

Contractor shall comply with:

1. The requirements of 49 U.S.C. § 5301(d), which states the Federal policy that elderly persons and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy;
2. All applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps;
3. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act;
4. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act; and
5. All applicable requirements of the following regulations and any subsequent amendments thereto:
  - (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

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

## **RR-21**

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

#### **A. Applicability**

This Article applies to federally funded contracts for transit operations.

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

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

**C. Certificate of Compliance**

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

**D. Drug and Alcohol Testing Program**

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

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

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

**RR-22**

**TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS \***

**A. Applicability**

Subject to the limitations in Sections B, C, and D, this Article applies if this Contract involves transit operations to be performed by employees of a Contractor recognized by FTA to be a transit operator, and if FTA has determined that it is financed in whole or in part with Federal assistance.

**B. General Transit Employee Protective Requirements**

If FTA has determined that this Contract involves transit operations financed in whole or in part with Federal assistance (other than Federal assistance authorized by 49 U.S.C. § 5310(a)(2) or 49 U.S.C. § 5311), and if the U.S. Secretary of Transportation has determined that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for Omnitrans under this Contract, then Contractor shall perform the transit operations work under the Contract in compliance with terms and conditions, (a) determined by the U.S. Secretary of Labor to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. Department of Labor (“U. S. DOL”) guidelines at 29 C.F.R. Part 215, and any amendments thereto, and (b) stated in a U. S. DOL letter of certification to FTA, the date of which is set forth in the applicable Grant Agreement or Cooperative Agreement with Omnitrans, and which is incorporated in the Form of Contract as a Contract Document entitled “U. S. DOL Certification”.

**C. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a) (2) for Elderly Individuals and Individuals with Disabilities**

If FTA has determined that this Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for Omnitrans under the Contract, Contractor shall perform the Work in compliance with the terms and conditions determined, (a) by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto, and (b) stated in the U.S. DOL's letter of certification to FTA, the date of which is set forth in the applicable Grant Agreement or Cooperative Agreement with Omnitrans, and which is incorporated in the Form of Contract as a Contract Document entitled “U. S. DOL Certification”.

**D. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas**

If FTA has determined that this Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, Contractor shall comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

**E. Indemnity**

Contractor shall defend, indemnify and hold harmless Omnitrans, and its Board Members, employees and agents from and against all liability, claims, demands actions, costs, judgments, penalties, damages, losses and expenses arising out of or in connection with Contractor's failure to comply with or failure to carry out its responsibilities under all applicable provisions of Sections B, C and D of this Article.

## **RR-23**

### **BONDING REQUIREMENTS**

#### Applicability to Contracts

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

- A. A bid guarantee from each bidder equivalent to ten (10) percent of the bid price. The "bid guarantees" shall consist of a firm commitment and may be in any of the following forms: (a) cash; (b) cashier's check payment to Omnitrans; (c) a certified check payable to the city; or (d) a bidder's bond executed by an admitted surety insurer. Such as a bid bond, certifies check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- B. A performance bond on the part of the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- C. A payment bond on the part of the Contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract.

## **RR-24**

### **DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS**

#### Background and Application

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that "at least partly are financed by a loan or grant from the Federal Government." 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i) (5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating." 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

The clause language is drawn directly from 29 CFR 5.5(a) and any deviation from the model clause below should be coordinated with counsel to ensure the Acts' requirements are satisfied.

### **Clause Language**

#### **Davis-Bacon and Copeland Anti-Kickback Acts**

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a) (1) (v) (B) or (C) of this section, shall be paid to all workers performing work in the Classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - Omnitrans shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, Omnitrans may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

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

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Omnitrans for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and

fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable

classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be

grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**(8) Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**(9) Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**(10) Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

## **RR-25 PRIVACY ACT - 5 U.S.C. 552**

### **Applicability to Contracts**

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

### **Flow Down**

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

### **Model Clause/Language**

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

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

- (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,  
  
5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- (2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

## **RR- 26**

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

#### **Applicability to Contracts**

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

#### **Flow Down**

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

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

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

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

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

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

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

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

## **RR – 27**

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

#### **Applicability to Contracts**

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

#### **Flow Down**

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

#### **Model Clauses/Language**

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

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

## **RR-28**

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

#### **Applicability to Contracts**

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

#### **Flow Down**

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

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

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

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

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

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

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

## **RR-29**

### **VETERANS PREFERENCE**

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

## **END OF REGULATORY REQUIREMENTS**

ITEM # F5

**DATE:** March 5, 2014

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

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

**FROM:** Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE AWARD (BENCH) - CONTRACT MNT14-133 (A-B),  
BATTERIES**

**FORM MOTION**

Authorize the CEO/General Manager to award Contracts MNT14-133A to H & H Auto Parts Wholesale of Arleta, CA, and MNT14-133B to Battery Systems Inc., of Fontana, CA, for the provision of Batteries for a three (3) year base period beginning March 5, 2014, and ending no later than March 4, 2017, with the authority to exercise two (2) single option years to extend the contract to no later than March 4, 2019, in an aggregate not to exceed amount of \$319,000, plus a 10% contingency of \$31,900, for a total not-to-exceed amount of \$350,900.

**BACKGROUND**

On December 4, 2013, Omnitrans' Board of Directors authorized the release of Invitation for Bids IFB-MNT14-133 for the provision of Batteries for the existing fleet. Staff released the IFB, notices were published in two local newspapers of general circulation and posted on Omnitrans' online bidding system. Eight bids were received electronically by the deadline of February 5, 2014. Two bids were found to be responsive. Award is being made to the lowest two responsive and responsible bidders. The Independent Cost Estimate was \$319,137. The contracts that staff is requesting approval for are as follows:

CONTRACT NO.	CONTRACTOR	BASE CONTRACT AMOUNT
MNT14-133A	H&H WHOLESALE PARTS	\$133,980
MNT14-133B	BATTERY SYSTEMS, INC.	\$57,420

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

### **FUNDING SOURCE**

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

Department: 1200  
Expenditure Code: 504010

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

### **CONCLUSION**

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

PSG:JMS:JC



## CONTRACT AGREEMENT

between

H&H AUTO PARTS WHOLESALE  
12860 MUSCATINE STREET  
ARLETA, CA 91331

(hereinafter "CONTRACTOR")  
Telephone: 818-771-0926  
Fax: 818-771-0464

And

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

### CONTRACT DOCUMENTS

**CONTRACT NO. MNT14-133A**

### **BATTERIES**

Contract Amount: \$133,980

#### Omnitrans Project Manager:

Name: Oscar Tostado  
Title: Manager, East Valley  
Telephone: (909) 379-7483  
Email: [oscar.tostado@omnitrans.org](mailto:oscar.tostado@omnitrans.org)

#### Contract Administrator:

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



## TABLE OF CONTENTS

1.	SCOPE OF WORK.....	4
2.	PERIOD OF PERFORMANCE .....	4
3.	COMPENSATION.....	5
4.	INVOICING AND PAYMENT.....	5
5.	AUDIT AND INSPECTION OF RECORDS.....	6
6.	NOTIFICATION .....	6
7.	OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES.....	7
8.	DISPUTE RESOLUTION.....	8
9.	TERMINATION FOR CONVENIENCE .....	9
10.	TERMINATION FOR BREACH OF AGREEMENT .....	9
11.	ASSIGNMENT .....	10
12.	SUBCONTRACTING.....	10
13.	INDEPENDENT CONTRACTOR.....	10
14.	INSURANCE .....	11
15.	INDEMNITY.....	11
16.	REVISIONS IN SCOPE OF WORK.....	12
17.	RIGHTS IN TECHNICAL DATA .....	12
18.	OWNERSHIP OF REPORTS AND DOCUMENTS.....	12
19.	OWNERSHIP RIGHTS.....	12
20.	WORK FOR HIRE .....	13

21.	SUBMITTAL OF CLAIMS BY CONTRACTOR.....	13
22.	EQUAL OPPORTUNITY.....	14
24.	NOTIFICATION OF EMPLOYMENT OF OMNITRANS BOARD MEMBERS/ALTERNATES AND EMPLOYEES .....	14
25.	DISQUALIFYING POLITICAL CONTRIBUTIONS .....	15
26.	COMPLIANCE WITH LAW .....	15
27.	COMPLIANCE WITH LOBBYING POLICIES.....	15
28.	PUBLIC RECORDS ACT.....	15
29.	WAIVER/INVALIDITY .....	16
30.	FORCE MAJEURE.....	16
31.	CONFIDENTIALITY .....	16
32.	CONTRACTOR'S INTERACTION WITH THE MEDIA AND THE PUBLIC .....	17
33.	GOVERNING LAW .....	17
34.	MODIFICATIONS TO AGREEMENT .....	17
35.	LICENSING, PERMITS AND INSPECTION COSTS.....	18
36.	PRECEDENCE .....	18
37.	ENTIRE AGREEMENT.....	18

ATTACHMENT A - SCOPE OF WORK

ATTACHMENT B - REGULATORY REQUIREMENTS

ATTACHMENT C - PRICING

This Agreement is made and entered into as of this 5th day of March, 2014 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and H&H Auto Parts Wholesale (hereinafter referred to as "CONTRACTOR").

## **RECITALS**

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

WHEREAS, CONTRACTOR has indicated it is qualified to perform such services and (1) has reviewed all the available data furnished by OMNITRANS pertinent to the Work to be rendered; (2) has inspected and reviewed the Work to be rendered; (3) will exercise the ordinary care and skill expected of a practitioner in its profession; and (4) is willing to accept responsibility of performing the Work set forth in this Agreement for the compensation and in accordance with the terms, requirements and conditions herein specified on an as-needed basis, no guarantee of usage;

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 March 4, 2017, unless terminated as specified in Section 8 and 9 of this Agreement. Omnitrans has no obligation to purchase any specified amount of products/services. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

Omnitrans' election to extend the Agreement beyond the Initial Term shall not diminish its right to terminate the Agreement for Omnitrans' convenience or CONTRACTORS default as provided elsewhere in this Agreement. The "maximum term" of this Agreement shall be the period extended from March 14, 2014 Through March 13, 2017, which period encompasses the Initial Term. Omnitrans reserves the right to unilaterally exercise Option Years 1 and 2 at its sole discretion when appropriate to extend the agreement to March 13, 2019.

### **3. COMPENSATION**

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

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed One Hundred Thirty Three Thousand, Nine Hundred Eighty Dollars (\$133,980), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

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

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

CONTRACTOR shall submit invoices in duplicate to:

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

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

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

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

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

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

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

## **6. NOTIFICATION**

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

To OMNITRANS:

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

To CONTRACTOR:

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

## **7. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES**

### **A. OMNITRANS' Project Manager**

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

Project Manager: Frank Flores, Interim Materials Supervisor.

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

**B. Contractor's Key Personnel**

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

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

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

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

**8. DISPUTE RESOLUTION**

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

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

## **9. TERMINATION FOR CONVENIENCE**

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

## **10. TERMINATION FOR BREACH OF AGREEMENT**

- A. If CONTRACTOR fails to perform any of the provisions of this Agreement or so fails to make progress as to endanger timely performance of this Agreement, OMNITRANS may give CONTRACTOR written notice of such default. If CONTRACTOR does not cure such default or provide a plan to cure such default which is acceptable to OMNITRANS within the time permitted by OMNITRANS, then OMNITRANS may terminate this Agreement due to CONTRACTOR's breach of this Agreement.
- B. If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then OMNITRANS may immediately terminate this Agreement.
- C. If CONTRACTOR violates Section 26, Compliance with Lobbying Policies, of this Agreement, then OMNITRANS may immediately terminate this Agreement.
- D. In the event OMNITRANS terminates this Agreement as provided in this Section, OMNITRANS may procure, upon such terms and in such manner as OMNITRANS may deem appropriate, Work similar in scope and level of effort to those so terminated, and CONTRACTOR shall be liable to OMNITRANS for all of its costs and damages, including, but not limited, any excess costs for such Work.
- E. All finished or unfinished documents and materials produced or procured under this Agreement shall become OMNITRANS' property upon date of such termination.
- F. If, after notice of termination of this Agreement under the provisions of this Section, it is determined for any reason that CONTRACTOR was not in default under the provisions of this Section, or that the default was excusable under the terms of this Agreement, the rights and obligations of

the parties shall be the same as if the notice of termination had been issued pursuant to Section 8, Termination for Convenience.

- G. The rights and remedies of OMNITRANS provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

11. ASSIGNMENT

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

12. SUBCONTRACTING

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

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

13. INDEPENDENT CONTRACTOR

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

## 14. INSURANCE

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

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

Additional Insured:

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

## 15. INDEMNITY

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

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

## **16. REVISIONS IN SCOPE OF WORK**

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

## **17. RIGHTS IN TECHNICAL DATA**

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

## **18. OWNERSHIP OF REPORTS AND DOCUMENTS**

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

## **19. OWNERSHIP RIGHTS**

- A. In the event OMNITRANS rightfully obtains copies of Proprietary Data under the terms of the separate License Agreement and Escrow Agreement that govern rights in Documentation, Software and Intellectual Property created and/or developed by Contractor, its Third Party Software

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

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

## **20. WORK FOR HIRE**

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

## **21. SUBMITTAL OF CLAIMS BY CONTRACTOR**

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

pertinent circumstances of the event or occurrence giving rise to the claim and the indebtedness, obligation, injury, loss or damages allegedly incurred by CONTRACTOR.

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

## **22. EQUAL OPPORTUNITY**

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

## **23. STANDARD OF PERFORMANCE**

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

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

To ensure compliance with OMNITRANS' Ethics Policy, CONTRACTOR shall provide written notice to OMNITRANS disclosing the identity of any individual who CONTRACTOR desires to employ or retain under a contract, and who (1)

presently serves as a Board Member/Alternate or an employee of OMNITRANS, or (2) served as a Board Member/Alternate or an employee of OMNITRANS within the previous 12 months of the date of the proposed employment or retention by CONTRACTOR. CONTRACTOR's written notice shall indicate whether the individual will be an officer, principal or shareholder of the entity and/or will participate in the performance of this Agreement.

## **25. DISQUALIFYING POLITICAL CONTRIBUTIONS**

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

## **26. COMPLIANCE WITH LAW**

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

## **27. COMPLIANCE WITH LOBBYING POLICIES**

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

## **28. PUBLIC RECORDS ACT**

- A. All records, documents, drawings, plans, specifications and other material relating to conduct of OMNITRANS' business, including materials submitted by CONTRACTOR in its proposal and during the course of performing the Work under this Agreement, shall become the exclusive property of OMNITRANS and may be deemed public records. Said materials may be subject to the provisions of the California Public Records

Act. OMNITRANS' use and disclosure of its records are governed by this Act.

- B. OMNITRANS will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act, including interpretations of the Act or the definitions of trade secret, confidential or proprietary. OMNITRANS will accept materials clearly and prominently labeled "TRADE SECRET" or "CONFIDENTIAL" or "PROPRIETARY" as determined by CONTRACTOR. OMNITRANS will endeavor to notify CONTRACTOR of any request of the disclosure of such materials. Under no circumstances, however, will OMNITRANS be liable or responsible for the disclosure of any labeled materials whether the disclosure is required by law or a court order or occurs through inadvertence, mistake or negligence on the part of OMNITRANS or its officers, employees and/or contractors.
- C. In the event of litigation concerning the disclosure of any material submitted by CONTRACTOR, OMNITRANS' sole involvement will be as a stake holder, retaining the material until otherwise ordered by a court. CONTRACTOR, at its sole expense and risk, shall be responsible for prosecuting or defending any action concerning the materials, and shall defend, indemnify and hold OMNITRANS harmless from all costs and expenses, including attorneys' fees, in connection with such action.

## **29. WAIVER/INVALIDITY**

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

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

## **30. FORCE MAJEURE**

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

## **31. CONFIDENTIALITY**

CONTRACTOR agrees that for and during the entire term of this Agreement, any information, data, figures, records, findings and the like received or generated by CONTRACTOR in the performance of this Agreement, shall be considered and kept as the private and privileged records of OMNITRANS and will not be divulged to any person, firm, corporation, or other entity except on the direct prior

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

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

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

### **33. GOVERNING LAW**

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

### **34. MODIFICATIONS TO AGREEMENT**

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

### **35. LICENSING, PERMITS AND INSPECTION COSTS**

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

### **36. PRECEDENCE**

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, (2) Attachment A, Scope of Work, (3) provisions of IFB and (4) CONTRACTOR's proposal dated February 5, 2014.

### **37. ENTIRE AGREEMENT**

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

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

OMNITRANS

H&H AUTO PARTS WHOLESALE

---

P. SCOTT GRAHAM  
CEO/General Manager

---

JIM HOLMQUIST  
President

---

DATE

Federal Tax I.D. No. 95-405132

ATTACHMENT A  
SCOPE OF WORK/SPECIFICATIONS

**1. TECHNICAL SPECIFICATIONS:**

All Batteries shall meet or exceed the standards set by the Battery Council International and the Society of Automotive Engineers.

**2. TYPE – 8D, 8DS**

- A. The heavy-duty 8D-AGM coach batteries shall an Absorbed Glass Mat (AGM).
- B. The 8D-AGM batteries will be used in: New Flyer Coaches.
- C. The 8D-AGM batteries will be used in: Thomas Coaches.
- D. The 8D-AGM specifications are: 1450 CCA, Top Post, Reserve Capacity (430), Height 9" 13/16, Length 20" 3/4, Weight 130lbs.
- E. The 8-DS specifications requires: 1400CCA, AGM type and Side Post.
- F. Case and cover

Each cell cover shall be provided with rubber or plastic, threaded screw or push in type plugs. The battery case, cover and plugs shall be constructed using "NEW" materials only. Reclaimed materials are not acceptable, except recycled lead and recycled polypropylene.

G. Positive and Negative plates

The plates shall be constructed of at least High Purity Lead. Height, weight and thickness of plates shall be such that performance and test specifications shall be achieved or exceeded.

H. Separators

The separators shall be of Absorbed Glass Mat (AGM) construction.

I. Post

Top posts are required in the 8D-AGM. Battery post shall be at minimum "Standard Heavy Duty" automotive type. Contractor shall indicate extra charges, if any, on Bid Form for "Flag", "Angle", "Marine" or "Side Post" terminals.

J. Handles

All 8D batteries shall have a Nylon rope attached to a carrying handle.

K. Dimensions

Case dimensions shall be no larger than 20-1/2" length x 11-1/8" width 9-3/4 height (to top post)

### **3. COACH BATTERIES – GROUP 2**

#### **Type – 31-H**

- 1) The Type 31-H coach batteries shall be maintenance free, totally sealed, the heavy-duty 31-H coach batteries shall be of Absorbed Glass Mat (AGM). The 31-H batteries will be used in: New Flyer Coaches.
- 2) The 31-H specifications are: 1150 CCA, Reserve Capacity (205), Length 13", Width 6.80" Height 9.47", Terminal Top Post 3/8 studs, Weight 75 lbs.
- 3) Case and Cover  
Each cell cover shall be provided with rubber or plastic, threaded screw or push in type plugs. The battery case, cover and plugs shall be constructed using "NEW" materials only. Reclaimed materials are not acceptable, except recycled lead and recycled polypropylene.
- 4) Positive and Negative plates  
The plates shall be constructed of at least High Purity Lead. Height, weight and thickness of plates shall be such that performance and test specifications shall be achieved or exceeded.
- 5) Separators  
The separators shall be of Absorbed Glass Mat (AGM) construction.
- 6) Post  
Battery post shall be at minimum "Standard Heavy Duty" automotive type. Contractor shall indicate extra charges, if any, on Bid Form for "Flag", "Angle", "Marine" or "Side Post" terminals.
- 7) Handles  
All Type 31-H batteries shall have a Nylon rope attached to a carrying handle, or a built in, recessed plastic on the top of the battery and must fit in our battery box area.
- 8) Dimensions  
Case dimensions shall be no larger than 13" length x 6-13/16" width x 9-1/2" height (to top post).

### **4. COACH BATTERY LABELING, MARKING AND CODING**

Each battery shall have manufacturers' product label attached on two (2) sides of battery. Each battery shall be labeled with necessary safety and disposal labels, and identified as to year and month of manufacture.

## 5. BATTERY CORES

Contractor shall indicate battery core charge or battery core credit value on Bid sheet. Omnitrans is responsible for keeping track of the number of cores picked up by Contractor. Contractor shall pick up all battery cores and warranty replacement batteries at time of delivery at **no charge**. Contractor shall issue **“Core Credit”** at time of pick up for all used batteries. Contractor shall use either a Bill of Lading or Manifest to record shipments of cores picked up from Omnitrans. A copy of the record shall be given to Omnitrans at the time of battery core pick up. Contractor shall submit with their bid, their specification information that describes the handling/reprocessing and disposal practices of battery cores after they are picked up from Omnitrans.

## 6. COACH BATTERIES

Omnitrans Material #	Manufacturer Part #	Minimum Required CCA	Fit, Form, & Function	Est Annual Usage
143925	312, 761A, 8D, 708D	1100	Thomas SLF232G	7
171660*	113377, 708D-ST, 761aS, 771A, 8DHC3, 8DHCB/SP, 761A/SP	1150	New Flyer SR585, SR674, SR709,	155
171660*	113377, 708D-ST, 761aS, 771A, 8DHC3, 8DHCB/SP, 761A/SP	1400	SR813, SR842, SR1337	155
218488	454952, AGM31	1000	New Flyer SR1563	8
218491	327798, 31-PC2150	1150	New Flyer SR1564	33
218698	455481, 8D-AGM	1450	New Flyer SR1565, SR1677	11

\*Side Post

## 7. WARRANTY

All items purchased under this Contract shall be guaranteed for a **minimum** of one (1) year against any defects by the battery manufacturer with pro-rated purchase credit given, including shipping charges from date of Omnitrans installation. Consequential damages are to be included in the Warranty. Any supplier or manufacturer’s standard limited warranty coverage greater than that specified above must also be extended to Omnitrans.

**8. MSDS**

The contractor shall provide a Material Safety Data Sheet (MSDS) for all products containing any toxic items that may be harmful to the end user or environment.

**9. DELIVERY**

- A. Contractor shall maintain adequate inventory to continuously supply Omnitrans for the duration of the Contract. Omnitrans will maintain a sufficient number of batteries to insure continuous operation of the fleet. Omnitrans bases its procurements on a fourteen day purchasing lead-time.
- B. Contractor shall ship requested parts within 3 working days of notification of order for normal delivery and same day for expedited (overnight, 2<sup>nd</sup> day, etc.) delivery.
- C. Contractor shall reimburse Omnitrans all expenses incurred to fulfill the contract requirements due to any late product deliveries and/or inadequate services.
- D. Omnitrans will not pay any premium handling charges related to expedited shipping. Omnitrans shall pay for direct and actual freight charges. Omnitrans reserves the right to request proof of freight charges or validate referenced charges independently. Omnitrans will coordinate with the contractor to determine which shipping quantities will be most cost effective for both parties.

**\*\*End of Scope of Work\*\***

MNT14-133A  
ATTACHMENT C - PRICING  
BATTERIES

Bid Results for Batteries (IFB-MNT14-133R)  
Line Total: (UNIT PRICE)

Section	Item Code Description	H&H Wholesale Parts
BASE YEARS 1-3: Coach Batteries (INCLUDE CORE CHARGES, DELIVERY AND ANY DIRECT OR INDIRECT CHARGES)	143925 Battery	\$150.74
BASE YEARS 1-3: Coach Batteries (INCLUDE CORE CHARGES, DELIVERY AND ANY DIRECT OR INDIRECT CHARGES)	171660 Battery (Minimum Required CCA 1400)	\$158.48
BASE YEARS 1-3: Coach Batteries (INCLUDE CORE CHARGES, DELIVERY AND ANY DIRECT OR INDIRECT CHARGES)	218488 Battery	\$177.35
BASE YEARS 1-3: Coach Batteries (INCLUDE CORE CHARGES, DELIVERY AND ANY DIRECT OR INDIRECT CHARGES)	218698 Battery	\$325.00
BASE YEARS 1-3: 8-D Deep Cycle Batteries (INCLUDE CORE CHARGES, DELIVERY AND ANY DIRECT OR INDIRECT CHARGES)	8D-AGM 12V	\$325.00
BASE YEARS 1-3: Service Batteries (INCLUDE CORE CHARGES DELIVERY AND ANY DIRECT OR INDIRECT CHARGES)	Group 65 - CCA 750-900	\$76.40
BASE YEARS 1-3: Service Batteries (INCLUDE CORE CHARGES DELIVERY AND ANY DIRECT OR INDIRECT CHARGES)	Group 34 - CCA 850-1000	\$75.40
OPTION YEAR 1: Coach Batteries (INCLUDE CORE CHARGES, DELIVERY AND ANY DIRECT OR INDIRECT CHARGES)	143925 Battery	\$159.98
OPTION YEAR 1: Coach Batteries (INCLUDE CORE CHARGES, DELIVERY AND ANY DIRECT OR INDIRECT CHARGES)	171660 Battery (Minimum Required CCA 1400)	\$168.19
OPTION YEAR 1: Coach Batteries (INCLUDE CORE CHARGES, DELIVERY AND ANY DIRECT OR INDIRECT CHARGES)	218488 Battery	\$188.21
OPTION YEAR 1: Coach Batteries (INCLUDE CORE CHARGES, DELIVERY AND ANY DIRECT OR INDIRECT CHARGES)	218698 Battery	\$344.90
OPTION YEAR 1: 8-D Deep Cycle Batteries (INCLUDE CORE CHARGES, DELIVERY AND ANY DIRECT OR INDIRECT CHARGES)	8D-AGM 12V	\$344.90
OPTION YEAR 1: Service Batteries (INCLUDE CORE CHARGES DELIVERY AND ANY DIRECT OR INDIRECT CHARGES)	Group 65 - CCA 750-900	\$81.08
OPTION YEAR 1: Service Batteries (INCLUDE CORE CHARGES DELIVERY AND ANY DIRECT OR INDIRECT CHARGES)	Group 34 - CCA 850-1000	\$80.10
OPTION YEAR 2: Coach Batteries (INCLUDE CORE CHARGES, DELIVERY AND ANY DIRECT OR INDIRECT CHARGES)	143925 Battery	\$163.18
OPTION YEAR 2: Coach Batteries (INCLUDE CORE CHARGES, DELIVERY AND ANY DIRECT OR INDIRECT CHARGES)	171660 Battery (Minimum Required CCA 1400)	\$171.56
OPTION YEAR 2: Coach Batteries (INCLUDE CORE CHARGES, DELIVERY AND ANY DIRECT OR INDIRECT CHARGES)	218488 Battery	\$191.98
OPTION YEAR 2: Coach Batteries (INCLUDE CORE CHARGES, DELIVERY AND ANY DIRECT OR INDIRECT CHARGES)	218698 Battery	\$351.80
OPTION YEAR 2: 8-D Deep Cycle Batteries (INCLUDE CORE CHARGES, DELIVERY AND ANY DIRECT OR INDIRECT CHARGES)	8D-AGM 12V	\$351.80
OPTION YEAR 2: Service Batteries (INCLUDE CORE CHARGES DELIVERY AND ANY DIRECT OR INDIRECT CHARGES)	Group 65 - CCA 750-900	\$82.71
OPTION YEAR 2: Service Batteries (INCLUDE CORE CHARGES DELIVERY AND ANY DIRECT OR INDIRECT CHARGES)	Group 34 - CCA 850-1000	\$81.71



## CONTRACT AGREEMENT

between

BATTERY SYSTEMS, INC.  
C CORPORATION  
16010 VALLEY BLVD.  
FONTANA, CA 92335

(hereinafter "CONTRACTOR")  
Telephone: 909-823-9865

And

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

### CONTRACT DOCUMENTS

**CONTRACT NO. MNT14-133B**

### BATTERIES

Contract Amount: \$57,420

#### Omnitrans Project Manager:

Name: Oscar Tostado  
Title: Manager, East Valley  
Telephone: (909) 379-7483  
Email: [oscar.tostado@omnitrans.org](mailto:oscar.tostado@omnitrans.org)

#### Contract Administrator:

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



## TABLE OF CONTENTS

1.	SCOPE OF WORK.....	4
2.	PERIOD OF PERFORMANCE .....	4
3.	COMPENSATION.....	5
4.	INVOICING AND PAYMENT.....	5
5.	AUDIT AND INSPECTION OF RECORDS.....	6
6.	NOTIFICATION .....	6
7.	OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES.....	7
8.	DISPUTE RESOLUTION.....	8
9.	TERMINATION FOR CONVENIENCE .....	9
10.	TERMINATION FOR BREACH OF AGREEMENT .....	9
11.	ASSIGNMENT .....	10
12.	SUBCONTRACTING.....	10
13.	INDEPENDENT CONTRACTOR.....	10
14.	INSURANCE .....	11
15.	INDEMNITY.....	11
16.	REVISIONS IN SCOPE OF WORK.....	12
17.	RIGHTS IN TECHNICAL DATA .....	12
18.	OWNERSHIP OF REPORTS AND DOCUMENTS.....	12
19.	OWNERSHIP RIGHTS.....	12
20.	WORK FOR HIRE .....	13

21.	SUBMITTAL OF CLAIMS BY CONTRACTOR.....	13
22.	EQUAL OPPORTUNITY.....	14
24.	NOTIFICATION OF EMPLOYMENT OF OMNITRANS BOARD MEMBERS/ALTERNATES AND EMPLOYEES .....	14
25.	DISQUALIFYING POLITICAL CONTRIBUTIONS .....	15
26.	COMPLIANCE WITH LAW .....	15
27.	COMPLIANCE WITH LOBBYING POLICIES.....	15
28.	PUBLIC RECORDS ACT.....	15
29.	WAIVER/INVALIDITY .....	16
30.	FORCE MAJEURE.....	16
31.	CONFIDENTIALITY .....	16
32.	CONTRACTOR'S INTERACTION WITH THE MEDIA AND THE PUBLIC .....	17
33.	GOVERNING LAW .....	17
34.	MODIFICATIONS TO AGREEMENT .....	17
35.	LICENSING, PERMITS AND INSPECTION COSTS.....	18
36.	PRECEDENCE .....	18
37.	ENTIRE AGREEMENT.....	18

ATTACHMENT A - SCOPE OF WORK

ATTACHMENT B - REGULATORY REQUIREMENTS

ATTACHMENT C - PRICING

This Agreement is made and entered into as of this 14TH day of March, 2014 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and Battery Systems, Inc. (hereinafter referred to as "CONTRACTOR").

## **RECITALS**

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

WHEREAS, CONTRACTOR has indicated it is qualified to perform such services and (1) has reviewed all the available data furnished by OMNITRANS pertinent to the Work to be rendered; (2) has inspected and reviewed the Work to be rendered; (3) will exercise the ordinary care and skill expected of a practitioner in its profession; and (4) is willing to accept responsibility of performing the Work set forth in this Agreement for the compensation and in accordance with the terms, requirements and conditions herein specified on an as-needed basis, no guarantee of usage;

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 March 14, 2017, unless terminated as specified in Section 8 and 9 of this Agreement. Omnitrans has no obligation to purchase any specified amount of products/services. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

Omnitrans' election to extend the Agreement beyond the Initial Term shall not diminish its right to terminate the Agreement for Omnitrans' convenience or CONTRACTORS default as provided elsewhere in this Agreement. The "maximum term" of this Agreement shall be the period extended from March 12, 2014 Through March 13, 2017, which period encompasses the Initial Term. Omnitrans reserves the right to unilaterally exercise Option Years 1 and 2 at its sole discretion when appropriate to extend the agreement to March 13, 2019.

### **3. COMPENSATION**

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

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Fifty Seven Thousand, Four Hundred Twenty Dollars (\$57,420), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

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

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

CONTRACTOR shall submit invoices in duplicate to:

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

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

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

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

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

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

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

## **6. NOTIFICATION**

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

### **To OMNITRANS:**

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

### **To CONTRACTOR:**

Battery Systems, Inc.  
C Corporation  
16010 Valley Blvd.  
Fontana, CA 92335  
Attn: Mikel Sides  
Contract Sales Manager

## **7. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES**

### **A. OMNITRANS' Project Manager**

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

Project Manager: Frank Flores, Interim Materials Supervisor

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

**B. Contractor's Key Personnel**

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

<u>Name</u>	<u>Role</u>
<u>Mikel Sides</u>	<u>Contract Sales Manager</u>

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

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

**8. DISPUTE RESOLUTION**

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

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

## **9. TERMINATION FOR CONVENIENCE**

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

## **10. TERMINATION FOR BREACH OF AGREEMENT**

- A. If CONTRACTOR fails to perform any of the provisions of this Agreement or so fails to make progress as to endanger timely performance of this Agreement, OMNITRANS may give CONTRACTOR written notice of such default. If CONTRACTOR does not cure such default or provide a plan to cure such default which is acceptable to OMNITRANS within the time permitted by OMNITRANS, then OMNITRANS may terminate this Agreement due to CONTRACTOR's breach of this Agreement.
- B. If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then OMNITRANS may immediately terminate this Agreement.
- C. If CONTRACTOR violates Section 26, Compliance with Lobbying Policies, of this Agreement, then OMNITRANS may immediately terminate this Agreement.
- D. In the event OMNITRANS terminates this Agreement as provided in this Section, OMNITRANS may procure, upon such terms and in such manner as OMNITRANS may deem appropriate, Work similar in scope and level of effort to those so terminated, and CONTRACTOR shall be liable to OMNITRANS for all of its costs and damages, including, but not limited, any excess costs for such Work.
- E. All finished or unfinished documents and materials produced or procured under this Agreement shall become OMNITRANS' property upon date of such termination.
- F. If, after notice of termination of this Agreement under the provisions of this Section, it is determined for any reason that CONTRACTOR was not in default under the provisions of this Section, or that the default was excusable under the terms of this Agreement, the rights and obligations of

the parties shall be the same as if the notice of termination had been issued pursuant to Section 8, Termination for Convenience.

- G. The rights and remedies of OMNITRANS provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

11. ASSIGNMENT

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

12. SUBCONTRACTING

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

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

13. INDEPENDENT CONTRACTOR

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

## 14. INSURANCE

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

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

Additional Insured:

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

## 15. INDEMNITY

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

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

## **16. REVISIONS IN SCOPE OF WORK**

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

## **17. RIGHTS IN TECHNICAL DATA**

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

## **18. OWNERSHIP OF REPORTS AND DOCUMENTS**

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

## **19. OWNERSHIP RIGHTS**

- A. In the event OMNITRANS rightfully obtains copies of Proprietary Data under the terms of the separate License Agreement and Escrow Agreement that govern rights in Documentation, Software and Intellectual Property created and/or developed by Contractor, its Third Party Software

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

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

## **20. WORK FOR HIRE**

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

## **21. SUBMITTAL OF CLAIMS BY CONTRACTOR**

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

pertinent circumstances of the event or occurrence giving rise to the claim and the indebtedness, obligation, injury, loss or damages allegedly incurred by CONTRACTOR.

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

## **22. EQUAL OPPORTUNITY**

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

## **23. STANDARD OF PERFORMANCE**

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

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

To ensure compliance with OMNITRANS' Ethics Policy, CONTRACTOR shall provide written notice to OMNITRANS disclosing the identity of any individual

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

## **25. DISQUALIFYING POLITICAL CONTRIBUTIONS**

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

## **26. COMPLIANCE WITH LAW**

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

## **27. COMPLIANCE WITH LOBBYING POLICIES**

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

## **28. PUBLIC RECORDS ACT**

- A. All records, documents, drawings, plans, specifications and other material relating to conduct of OMNITRANS' business, including materials submitted by CONTRACTOR in its proposal and during the course of performing the Work under this Agreement, shall become the exclusive property of OMNITRANS and may be deemed public records. Said materials may be subject to the provisions of the California Public Records

Act. OMNITRANS' use and disclosure of its records are governed by this Act.

- B. OMNITRANS will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act, including interpretations of the Act or the definitions of trade secret, confidential or proprietary. OMNITRANS will accept materials clearly and prominently labeled "TRADE SECRET" or "CONFIDENTIAL" or "PROPRIETARY" as determined by CONTRACTOR. OMNITRANS will endeavor to notify CONTRACTOR of any request of the disclosure of such materials. Under no circumstances, however, will OMNITRANS be liable or responsible for the disclosure of any labeled materials whether the disclosure is required by law or a court order or occurs through inadvertence, mistake or negligence on the part of OMNITRANS or its officers, employees and/or contractors.
- C. In the event of litigation concerning the disclosure of any material submitted by CONTRACTOR, OMNITRANS' sole involvement will be as a stake holder, retaining the material until otherwise ordered by a court. CONTRACTOR, at its sole expense and risk, shall be responsible for prosecuting or defending any action concerning the materials, and shall defend, indemnify and hold OMNITRANS harmless from all costs and expenses, including attorneys' fees, in connection with such action.

## **29. WAIVER/INVALIDITY**

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

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

## **30. FORCE MAJEURE**

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

## **31. CONFIDENTIALITY**

CONTRACTOR agrees that for and during the entire term of this Agreement, any information, data, figures, records, findings and the like received or generated by CONTRACTOR in the performance of this Agreement, shall be considered and kept as the private and privileged records of OMNITRANS and will not be divulged to any person, firm, corporation, or other entity except on the direct prior

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

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

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

### **33. GOVERNING LAW**

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

### **34. MODIFICATIONS TO AGREEMENT**

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

### **35. LICENSING, PERMITS AND INSPECTION COSTS**

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

### **36. PRECEDENCE**

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, (2) Attachment A, Scope of Work, (3) provisions of IFB and (4) CONTRACTOR's proposal dated February 5, 2014.

### **37. ENTIRE AGREEMENT**

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

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

OMNITRANS

BATTERY SYSTEMS, INC.

---

P. SCOTT GRAHAM  
CEO/General Manager

---

MIKEL SIDES  
Contract Sales Manager

---

DATE

---

DATE

Federal Tax I.D. No. : 77-0437059

ATTACHMENT A  
SCOPE OF WORK/SPECIFICATIONS

**1. TECHNICAL SPECIFICATIONS:**

All Batteries shall meet or exceed the standards set by the Battery Council International and the Society of Automotive Engineers.

**2. TYPE – 8D, 8DS**

- A. The heavy-duty 8D-AGM coach batteries shall an Absorbed Glass Mat (AGM).
- B. The 8D-AGM batteries will be used in: New Flyer Coaches.
- C. The 8D-AGM batteries will be used in: Thomas Coaches.
- D. The 8D-AGM specifications are: 1450 CCA, Top Post, Reserve Capacity (430), Height 9" 13/16, Length 20" 3/4, Weight 130lbs.
- E. The 8-DS specifications requires: 1400CCA, AGM type and Side Post.
- F. Case and cover

Each cell cover shall be provided with rubber or plastic, threaded screw or push in type plugs. The battery case, cover and plugs shall be constructed using "NEW" materials only. Reclaimed materials are not acceptable, except recycled lead and recycled polypropylene.

G. Positive and Negative plates

The plates shall be constructed of at least High Purity Lead. Height, weight and thickness of plates shall be such that performance and test specifications shall be achieved or exceeded.

H. Separators

The separators shall be of Absorbed Glass Mat (AGM) construction.

I. Post

Top posts are required in the 8D-AGM. Battery post shall be at minimum "Standard Heavy Duty" automotive type. Contractor shall indicate extra charges, if any, on Bid Form for "Flag", "Angle", "Marine" or "Side Post" terminals.

J. Handles

All 8D batteries shall have a Nylon rope attached to a carrying handle.

K. Dimensions

Case dimensions shall be no larger than 20-1/2" length x 11-1/8" width 9-3/4 height (to top post)

### **3. COACH BATTERIES – GROUP 2**

#### **Type – 31-H**

- 1) The Type 31-H coach batteries shall be maintenance free, totally sealed, the heavy-duty 31-H coach batteries shall be of Absorbed Glass Mat (AGM). The 31-H batteries will be used in: New Flyer Coaches.
- 2) The 31-H specifications are: 1150 CCA, Reserve Capacity (205), Length 13", Width 6.80" Height 9.47", Terminal Top Post 3/8 studs, Weight 75 lbs.
- 3) Case and Cover  
Each cell cover shall be provided with rubber or plastic, threaded screw or push in type plugs. The battery case, cover and plugs shall be constructed using "NEW" materials only. Reclaimed materials are not acceptable, except recycled lead and recycled polypropylene.
- 4) Positive and Negative plates  
The plates shall be constructed of at least High Purity Lead. Height, weight and thickness of plates shall be such that performance and test specifications shall be achieved or exceeded.
- 5) Separators  
The separators shall be of Absorbed Glass Mat (AGM) construction.
- 6) Post  
Battery post shall be at minimum "Standard Heavy Duty" automotive type. Contractor shall indicate extra charges, if any, on Bid Form for "Flag", "Angle", "Marine" or "Side Post" terminals.
- 7) Handles  
All Type 31-H batteries shall have a Nylon rope attached to a carrying handle, or a built in, recessed plastic on the top of the battery and must fit in our battery box area.
- 8) Dimensions  
Case dimensions shall be no larger than 13" length x 6-13/16" width x 9-1/2" height (to top post).

### **4. COACH BATTERY LABELING, MARKING AND CODING**

Each battery shall have manufacturers' product label attached on two (2) sides of battery. Each battery shall be labeled with necessary safety and disposal labels, and identified as to year and month of manufacture.

## 5. BATTERY CORES

Contractor shall indicate battery core charge or battery core credit value on Bid sheet. Omnitrans is responsible for keeping track of the number of cores picked up by Contractor. Contractor shall pick up all battery cores and warranty replacement batteries at time of delivery at **no charge**. Contractor shall issue **“Core Credit”** at time of pick up for all used batteries. Contractor shall use either a Bill of Lading or Manifest to record shipments of cores picked up from Omnitrans. A copy of the record shall be given to Omnitrans at the time of battery core pick up. Contractor shall submit with their bid, their specification information that describes the handling/reprocessing and disposal practices of battery cores after they are picked up from Omnitrans.

## 6. COACH BATTERIES

Omnitrans Material #	Manufacturer Part #	Minimum Required CCA	Fit, Form, & Function	Est Annual Usage
143925	312, 761A, 8D, 708D	1100	Thomas SLF232G	7
171660*	113377, 708D-ST, 761aS, 771A, 8DHC3, 8DHCB/SP, 761A/SP	1150	New Flyer SR585, SR674, SR709,	155
171660*	113377, 708D-ST, 761aS, 771A, 8DHC3, 8DHCB/SP, 761A/SP	1400	SR813, SR842, SR1337	155
218488	454952, AGM31	1000	New Flyer SR1563	8
218491	327798, 31-PC2150	1150	New Flyer SR1564	33
218698	455481, 8D-AGM	1450	New Flyer SR1565, SR1677	11

\*Side Post

## 7. WARRANTY

All items purchased under this Contract shall be guaranteed for a **minimum** of one (1) year against any defects by the battery manufacturer with pro-rated purchase credit given, including shipping charges from date of Omnitrans installation. Consequential damages are to be included in the Warranty. Any supplier or manufacturer’s standard limited warranty coverage greater than that specified above must also be extended to Omnitrans.

**8. MSDS**

The contractor shall provide a Material Safety Data Sheet (MSDS) for all products containing any toxic items that may be harmful to the end user or environment.

**9. DELIVERY**

- A. Contractor shall maintain adequate inventory to continuously supply Omnitrans for the duration of the Contract. Omnitrans will maintain a sufficient number of batteries to insure continuous operation of the fleet. Omnitrans bases its procurements on a fourteen day purchasing lead-time.
- B. Contractor shall ship requested parts within 3 working days of notification of order for normal delivery and same day for expedited (overnight, 2<sup>nd</sup> day, etc.) delivery.
- C. Contractor shall reimburse Omnitrans all expenses incurred to fulfill the contract requirements due to any late product deliveries and/or inadequate services.
- D. Omnitrans will not pay any premium handling charges related to expedited shipping. Omnitrans shall pay for direct and actual freight charges. Omnitrans reserves the right to request proof of freight charges or validate referenced charges independently. Omnitrans will coordinate with the contractor to determine which shipping quantities will be most cost effective for both parties.

**\*\*End of Scope of Work\*\***

MNT14-133B  
ATTACHMENT C - PRICING  
BATTERIES

Bid Results for Batteries (IFB-MNT14-133R)

Line Total: (UNIT PRICE)

Section	Item Code	Description	Battery Systems Inc
BASE YEARS 1-3: Coach Batteries (INCLUDE CORE CHARGES, DELIVERY AND ANY DIRECT OR INDIRECT CHARGES)	218491	Battery	\$254.55
BASE YEARS 1-3: 8-D Deep Cycle Batteries (INCLUDE CORE CHARGES, DELIVERY AND ANY DIRECT OR INDIRECT CHARGES)		8D-AGM 1300 CCA 450 RC MINUTES	\$441.25
BASE YEARS 1-3: Service Batteries (INCLUDE CORE CHARGES DELIVERY AND ANY DIRECT OR INDIRECT CHARGES)	218491	Battery	\$266.08
OPTION YEAR 1: 8-D Deep Cycle Batteries (INCLUDE CORE CHARGES, DELIVERY AND ANY DIRECT OR INDIRECT CHARGES)		8D-AGM 1300 CCA 450 RC MINUTES	\$461.21
OPTION YEAR 2: Coach Batteries (INCLUDE CORE CHARGES, DELIVERY AND ANY DIRECT OR INDIRECT CHARGES)	218491	Battery	\$273.34
OPTION YEAR 2: 8-D Deep Cycle Batteries (INCLUDE CORE CHARGES, DELIVERY AND ANY DIRECT OR INDIRECT CHARGES)		8D-AGM 1300 CCA 450 RC MINUTES	\$473.79

ITEM # F6

**DATE:** March 5, 2014

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

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

**FROM:** Jennifer M. Sims, Director of Procurement

**SUBJECT:** **EXECUTE AMENDMENT NO. 3 TO CONTRACT OPS10-20  
WEST VALLEY PARATRANSIT FUEL SERVICES**

### **FORM MOTION**

Authorize the CEO/General Manager to execute Amendment No. 3 to Contract OPS10-20 with Poma Automated Fueling, Inc., of Bloomington, CA, in the amount of \$170,564 for Option Year Two, increasing the total Contract not-to-exceed amount to \$3,086,224 through June 30, 2014.

### **BACKGROUND**

On June 2, 2010, the Board authorized the CEO/General Manager to award Contract OPS10-20 to Poma Automated Fueling, Inc., for the provision of unleaded fuel for the West Valley Paratransit Vehicle operations. Based on historical assumptions at the time of award, staff estimated the total cost of Option Year Two at \$690,560. A 10% contingency in the amount of \$69,056 was also allotted. Option Year Two was executed in the amount of \$759,616.

In mid-2010, the price of petroleum-based products started to rise dramatically. For Fiscal Year 2014, Omnitrans budgeted \$930,180 for unleaded fuel for West Valley Paratransit Vehicle operations. Due to the average fuel price to date and the current fuel consumption, it has been determined that an increase in the contract is necessary to provide fuel for the West Valley Paratransit fleet through the remainder of Fiscal Year 2014.

### **FUNDING**

The cost associated with this procurement is budgeted in the Operations Department operating budget as follows:


Departments: 2110 & 2400  
Expenditure Code: 504100

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

**CONCLUSION**

By proceeding with this increase to Option Year Two of the contract, Omnitrans will continue to purchase fuel at the contracted rate and avoid purchasing unleaded fuel on the open market at a much higher price.

PSG:JMS:CV

 <b>OmniTrans</b> Omnitrans STANDARD CONTRACT 1700 West Fifth Street San Bernardino CA 92411	<input checked="" type="checkbox"/>	New	AMENDMENT 3						Contract Number OPS10-20
	<input type="checkbox"/>	Change							
	<input type="checkbox"/>	Cancel							
	Omnitrans Department Operations				Dept. No. 1100		Project West Valley Paratransit Fuel Services		
	Omnitrans Procurement Representative Christine Van Matre				Telephone 909-379-7122		Total Contract Amount Not to Exceed \$3,086,224		
Contract Type:									
		Contract Start Date July 1, 2010	Contract End Date June 30, 2014	Previous Amount \$2,915,660	Amended Amount \$170,564				

THIS CONTRACT AMENDMENT NO. 3 is entered into in the State of California by and between Omnitrans, a Joint Powers Authority; hereinafter called Omnitrans, and

Name

Poma Automated Fueling, Inc.

hereinafter called Contractor

Address

571 West Slover Avenue

Bloomington CA 92316

Telephone

909-421-2280

Federal ID No.

33-0487199

#### IT IS HEREBY AGREED AS FOLLOWS:

- I. This Amendment No. 3 increases Contract OPS10-20 by \$170,564, bringing the Option Year Two total amount to \$930,180, for a new not-to-exceed contract total of \$3,086,224.
- II. Amendment No. 2, effective July 1, 2013, was exercised for Option Year Two through June 30, 2014 in the amount of \$759,616, for a new not-to-exceed contract amount of \$2,915,660.
- III. Option Year One, effective July 1, 2012, was exercised through June 30, 2013 for a new not-to-exceed amount of \$2,156,044.
- IV. Amendment No. 1 increased the original contract amount by \$230,724 for a new not-to-exceed contract amount of \$1,488,364.

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

- V. Delete Section 3 in its entirety and replace with the following:

"3. Compensation. Omnitrans agrees to pay, and the Contractor agrees to accept in full, payment for Option Year Two from July 1, 2013 through June 30, 2014 in an amount not to exceed \$930,180 as outlined in the Contract documents, for a new total contract amount not-to-exceed \$3,086,224. Per-gallon prices are based on the following:

1. OPIS (Colton Rack) plus \$0.065 at the following Poma-owned stations:
  - a. 3901 Guasti Road, Ontario, CA
  - b. 2095 South Riverside Avenue, Bloomington, CA
  - c. 3020 East La Cadena, Riverside, CA
  - d. 9808 Cherry Avenue, Fontana, CA
2. OPIS (Colton Rack) plus CFN Transfer Rate plus \$0.04 at sites other than those listed above."

AMENDMENT 3  
OPS10-20

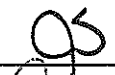
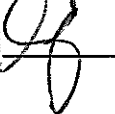
All other terms and conditions remain in full force and effect.

IN WITNESS WHEREOF, Omnitrans has caused this Amendment 3 to be executed on the date as stated above.

**OMNITRANS**

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

Dated \_\_\_\_\_

DP   
CM 

ITEM #           F7          

**DATE:** March 5, 2014

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

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

**FROM:** Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE RELEASE – IFB-MNT14-69  
BUS PARTS REBUILD SERVICES**

### **FORM MOTION**

Authorize the CEO/General Manager to release Invitation for Bids IFB-MNT14-69, for the provision of Bus Parts Rebuild Services for a two (2) year base period, and three (3) single option years beginning July 7, 2014, and ending no later than June 30, 2019.

### **BACKGROUND**

Omnitrans utilizes rebuild services to extend the useful life of bus parts such as air compressors, alternators, charge air coolers, transmissions and many others. The cost of purchasing new replacement parts is much higher than acquiring the services to rebuild existing parts.

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 \$570,290 per year.

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

### **FUNDING SOURCE**

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

Department: 1200  
Expenditure Code: 504010

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

**CONCLUSION**

By proceeding with this solicitation, Omnitrans will achieve cost savings by not having to purchase new parts.

PSG:JMS:JC

ITEM # F8

**DATE:** March 5, 2014

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

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

**FROM:** Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE RELEASE – IFB-MNT14-128  
BUS WINDOW REPLACEMENT**

### **FORM MOTION**

Authorize the CEO/General Manager to release Invitation for Bids IFB-MNT14-128, for the provision of Bus Window Replacement for a two (2) year base period, and three (3) single option years beginning July 7, 2014, and ending no later than June 30, 2019.

### **BACKGROUND**

Omnitrans will replace windows on our fleet of buses on an as needed basis. This solicitation will allow us to benefit from fixed pricing on replacing windows that have been damaged or vandalized and reduce the time vehicles are down for replacement.

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 \$169,315 per year.

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

### **FUNDING SOURCE**

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

Department: 1200  
Expenditure Code: 504010

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

## **CONCLUSION**

By proceeding with this solicitation, Omnitrans will achieve cost savings by receiving a fixed price on replacement windows.

PSG:JMS:JC

ITEM # F9

**DATE:** March 5, 2014

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

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

**FROM:** Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE RELEASE – IFB-OPS-14-178  
DIESEL AND UNLEADED FUELS**

### **FORM MOTION**

Authorize the CEO/General Manager to release Invitation for Bids IFB-OPS14-178, for the provision of bulk diesel and unleaded fuels for Omnitrans' East Valley, West Valley, and "I" Street Facilities for a two (2) year base period, and three (3) single option years beginning July 1, 2014, and ending no later than June 30, 2019.

### **BACKGROUND**

The current contract for bulk diesel and unleaded fuels expires on June 30, 2014. The current contract rack price for fuel is based on the OPIS daily unbranded averages, which allows for fluctuation in pricing.

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 \$3,320,639 for the base period.

### **FUNDING SOURCE**

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

Department: 1200  
Expenditure Code: 504110, Diesel Fuel  
504100, Unleaded Fuel

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

**CONCLUSION**

By proceeding with this solicitation, Omnitrans will benefit from economies of scale.

PSG:JMS:AA

ITEM #       F10      

**DATE:** March 5, 2014

**TO:** Omnitrans Board of Directors

**FROM:** Alan Wapner, Chair

**SUBJECT: APPROVE CEO/GENERAL MANAGER EMPLOYMENT AGREEMENT**

**FORM MOTION**

Approve Employment Agreement for P. Scott Graham for the position of Chief Executive Officer/General Manager, effective February 5, 2014.

**BACKGROUND**

On February 5, 2014, the Omnitrans Board of Directors voted to remove the “Interim” title and appoint P. Scott Graham to the position of CEO/General Manager, with the Board Chair and Vice Chair designated to negotiate contract terms with Mr. Graham.

On Tuesday, February 18, 2014, Vice Chair Sam Spagnolo and I met with Mr. Graham to negotiate the terms of his contract. The resultant Employment Agreement now requires approval by the Board of Directors.

AW:VD

EMPLOYMENT AGREEMENT BETWEEN  
OMNITRANS AND P. SCOTT GRAHAM

THIS AGREEMENT (herein “Agreement”) is made as of the 5<sup>th</sup> day of February, 2014 (the “Effective Date”) by and between Omnitrans (herein “OMNITRANS”) a governmental entity as employer, and P. Scott Graham (herein “EMPLOYEE”) an individual as employee who hereby agree as follows:

I.

RECITALS

A. OMNITRANS is a governmental entity existing pursuant Government Code section 6500, et seq., having the powers and duties therein specified and generally responsible for transportation services within San Bernardino County Valley.

B. EMPLOYEE has been selected by the OMNITRANS Board of Directors (“BOARD”) to serve as OMNITRANS’s Chief Executive Officer/General Manager. EMPLOYEE shall serve at the pleasure of the Board.

C. The parties have set forth below the terms and conditions of their agreement.

D. This Agreement shall have a term of five years from the Commencement Date. The Commencement date shall be February 5, 2014. The term shall be automatically extended by one year at each Anniversary Date of the Commencement Date unless otherwise terminated.

II.

COMPENSATION

A. Salary.

Commencing on the Commencement Date (date of hire), EMPLOYEE’s gross salary shall be \$220,000 per year which shall be paid in the manner and at the same times as other salaries of OMNITRANS are paid.

Performance Expectations and Evaluation.

OMNITRANS Board shall review and evaluate the performance of the EMPLOYEE during the month of February of each calendar year during the term of this contract. Said review

and evaluation shall be in accordance with specific criteria developed jointly by OMNITRANS and EMPLOYEE. Said criteria may be added to or deleted from as the Board of Directors may from time to time determine, in consultation with EMPLOYEE. Further, the Chair of the Board of Directors of OMNITRANS shall provide EMPLOYEE with a summary written statement of the findings of the evaluation and provide an adequate opportunity for EMPLOYEE to discuss his evaluation with the Board of Directors in closed session. Annually, OMNITRANS and EMPLOYEE shall define such goals and performance objectives which they determine necessary for the proper operation of OMNITRANS and in the attainment of the Board's policy objectives and shall further establish a relative priority among those various goals and objectives, said goals and objectives are to be reduced to writing. They shall generally be attainable and capital budgets and appropriations provided.

After each annual evaluation of EMPLOYEE, the OMNITRANS Board shall review the salary level of EMPLOYEE and approve any adjustment of EMPLOYEE's salary as determined by the Board of Directors to be appropriate based on the performance of EMPLOYEE. EMPLOYEE's salary may be adjusted by OMNITRANS annually as of the anniversary date. EMPLOYEE agrees that if management wages are frozen in a given year, no increase would be expected for the CEO/GM in the same fiscal or budget year.

B. Expense Reimbursement.

OMNITRANS shall reimburse EMPLOYEE for reasonable and subsistence expenses of EMPLOYEE for professional and official travel, meetings and occasions adequate to continue the professional development of EMPLOYEE and to adequately pursue necessary official functions for OMNITRANS. OMNITRANS also agrees to pay for the expenses of EMPLOYEE for workshops and seminars that are necessary for his professional development and for the good of OMNITRANS subject to approval by the Chair of the Board of Directors.

General Expenses

OMNITRANS recognizes that certain expenses of non-personal and job-affiliated nature are incurred by EMPLOYEE in conjunction with his responsibilities hereunder and shall reimburse or pay said general expenses in accordance with existing OMNITRANS policy.

C. Benefits.

(1) OMNITRANS Health Benefits: EMPLOYEE shall receive the same benefits package as that offered to OMNITRANS management employees as the same may from time to time be established by OMNITRANS. The beginning benefits are set forth on Exhibit "A" attached hereto and incorporated herein by this reference.

(2) Exceptions: EMPLOYEE shall receive the following:

(a) Sick Leave: EMPLOYEE shall receive in accordance with Policy 608 an annual accrual of ninety-six (96) hours per year (12 days).

(1) 50% of accrued sick leave may be cashed out at the time of retirement, voluntary, or involuntary separation. This provision will not apply if termination is for cause.

(b) Vehicle: OMNITRANS shall provide EMPLOYEE with a vehicle for his use. The EMPLOYEE shall have the exclusive and unrestricted use, at all times during the term of this Agreement, of an automobile provided by OMNITRANS, provided the EMPLOYEE pays OMNITRANS the sum of \$100 per month. Said automobile shall be a fully equipped, full-sized sedan or similar class/category vehicle, made in America, capable of seating at least five (5) adults, and shall not be required to display exempt license plates. OMNITRANS shall be responsible for providing liability, property damage, and comprehensive insurance. The cost of such insurance premium shall be borne by OMNITRANS. OMNITRANS shall be responsible for paying for the fuel, repair, and maintenance of said automobile.

(c) Vacation: EMPLOYEE shall be entitled to 200 hours (25 days) annual vacation per year. Said amount is based upon his 20 years of service in the industry. His vacation shall accrue, and be paid in accordance with OMNITRANS' Policy. EMPLOYEE shall maintain his current Vacation hours that were earned during his prior employment with OMNITRANS.

(d) Deferred Compensation: EMPLOYEE shall receive an OMNITRANS paid contribution to his Deferred Compensation Plan(s) in an amount not to exceed \$22,500 per year. The amounts contributed by OMNITRANS under this provision shall be subject to the terms and conditions of the plan selected at the EMPLOYEE's option and Internal Revenue Code requirements and shall include the maximum allowed contribution and allowable catch up contributions.

(e) Health Insurance Benefits: EMPLOYEE shall be entitled to receive health benefits (paid for by OMNITRANS) for himself and his eligible family and Family Vision Insurance and Dental Insurance.

(f) Life Insurance: OMNITRANS shall provide a term life insurance policy in the amount of \$300,000 for EMPLOYEE during the term of this contract. EMPLOYEE may also purchase additional life insurance.

(g) Retirement Compensation: OMNITRANS shall pay to PERS on behalf of EMPLOYEE the full EMPLOYEE contribution as well as Employer's contribution. It is

agreed that as Chief Executive Officer/General Manager, EMPLOYEE shall continue to be enrolled in PERS commencing on the commencement date of this Agreement. The provisions on membership set forth above are contingent on meeting the requirements, laws, rules, regulations and directives of said retirement system (date of hire).

(h) OMNITRANS Transit System pass. Provided by OMNITRANS for self and eligible family.

(i) Holidays. All legal holidays as established by OMNITRANS policy.

D. Term.

This Agreement shall have a term of five years from the Commencement Date. The Commencement Date shall be February 5, 2014. The term shall be automatically extended by one year at each Anniversary Date of the Commencement Date unless otherwise terminated.

### III.

#### DUTIES AND RESTRICTIONS

A. Duties.

Overall Management: EMPLOYEE is the Chief Executive Officer/General Manager for OMNITRANS, its highest staff position, and shall be responsible for the management of all aspects of OMNITRANS operations on a day to day basis, subject only to the policy direction of the BOARD of Directors ("BOARD"). EMPLOYEE's duties and responsibilities shall include:

(1) Supervision of all department heads, departments and employees, including sole authority, except as EMPLOYEE may delegate to staff, to hire and terminate OMNITRANS' employees in accordance with applicable law and OMNITRANS' policies, rules and regulations;

(2) Responsibility for overall management of employee relations matters;

(3) Establishment of a proposed set of short range goals and a proposed action plan for developing and implementing medium and longer term goals for the organization, to be presented to the BOARD for review and consideration annually;

(4) Assisting the BOARD in community and public relations matters;

(5) Monitoring, managing, and overseeing the OMNITRANS budget and the OMNITRANS revenues and expenses;

(6) Overseeing timely development and presentation to the BOARD of annual proposed budgets;

(7) Assuming overall responsibility for management of staff and in guiding OMNITRANS toward its BOARD approved goals;

(8) Assuring that OMNITRANS financial affairs are properly managed, accounted for, and audited, and that appropriate reports thereon are made to the BOARD and to others as required by law;

(9) Conferring with legislative liaisons regarding legislative matters, monitoring, report on, and making recommendations on legislative activities;

(10) Attending all regular and special meetings of the BOARD and of BOARD committees and subcommittees as requested, assuming overall responsibility for preparation and presentation of all agendas and staff reports;

(11) EMPLOYEE, in the performance of his duties and responsibilities, shall work those hours that may be necessary for a full time commitment.

(12) Representing the BOARD and staff in contacts and communications with the public, member agencies, and other outside agencies and organizations with respect to transit matters and OMNITRANS issues, within the scope of BOARD policies and programs;

(13) Such other and further activities as the BOARD may from time to time direct; and

(14) Such other and further activities as EMPLOYEE determines necessary to competently and professionally carry out his job.

B. Restrictions.

(1) Outside Employment and Activities: EMPLOYEE shall not accept any other employment during the term of this Agreement and shall devote his full time to his OMNITRANS position. EMPLOYEE shall not engage in any outside activities during the term of this Agreement that generate financial or other conflict of interest with his position as OMNITRANS Chief Executive Officer/General Manager, or the appearance thereof. If EMPLOYEE is not certain whether or not a particular proposed outside activity is permitted under this Agreement, he shall ask the BOARD for a determination thereon before engaging in the activity, and the BOARD shall within thirty (30) days make a determination thereon.

(2) Direction from BOARD: EMPLOYEE shall take direction as to matters of OMNITRANS business only from the BOARD as a whole or from the Chair of the Board of Directors.

#### IV.

#### TERMINATION OF AGREEMENT

This Agreement may be terminated at any time as follows:

A. By OMNITRANS.

OMNITRANS may terminate this Agreement at any time, either with or without cause, by majority vote of the total authorized membership of its BOARD. Termination for cause shall be under one or more of the following paragraphs:

(1) For Cause:

(a) Misconduct: In the event that OMNITRANS has determined, based on an evaluation of facts and circumstances, that there is good cause to terminate this Agreement due to (1) malfeasance, (2) gross negligence, (3) fraud, (4) serious misconduct, or (5) conviction of a felony on the part of EMPLOYEE, OMNITRANS shall give EMPLOYEE notice of termination, which at the option of the BOARD shall either be effective immediately, or the notice shall specify the intent to terminate and the date the termination will become final. In either case the notice shall be accompanied by a statement of the basis for the termination. In the case of a termination that is effective immediately, EMPLOYEE shall have the right to present any rebuttal information to the BOARD, in writing, no later than ten (10) calendar days after the termination. In the event that the BOARD gives notice of an intent to terminate at a future date, EMPLOYEE shall have the right to present any rebuttal information to the BOARD, in writing, prior to the effective date of the termination. In either case, EMPLOYEE shall have the right to a hearing before the BOARD, in open or closed session as authorized by the Brown Act, within fourteen (14) days following termination. The BOARD shall review any rebuttal information provided by EMPLOYEE and any other relevant material and shall then determine whether to uphold the termination or to rescind it. The BOARD's decision shall be final.

(b) Material Uncorrected Failure to Perform: In the event that OMNITRANS has determined, based on an evaluation of facts and circumstances, that there is good cause to terminate this Agreement that does not rise to the level of seriousness addressed

above in subparagraph IV(A)(1)(a), such as (1) a repeated material failure to meet stated, reasonable performance objectives that is within EMPLOYEE's control to correct but which is not corrected in spite of notice of necessary corrective action, (2) uncorrected, repeated, material failure to present a positive public and media image on behalf of OMNITRANS, in spite of notice and opportunity to correct the deficiency, (3) or other uncorrected material failure in performance, OMNITRANS may terminate the Agreement for cause under this subparagraph. Provided however, OMNITRANS (1) first gives notice to EMPLOYEE in writing of the alleged failure in performance and a reasonable opportunity to cure the problem, and (2) gives EMPLOYEE a reasonable opportunity to present evidence to the BOARD in rebuttal to any alleged failure in performance or of any extenuating circumstances showing that the failure was beyond the control of EMPLOYEE, and (3) OMNITRANS will not terminate for cause under this subparagraph IV(b) unless it determines that EMPLOYEE is either incapable or unwilling to correct the perceived problem in spite of having had warnings and a reasonable opportunity to cure the problem, and that the evidence in support of the grounds for termination is substantial taking into account all of the information available to the BOARD, including any evidence presented by EMPLOYEE.

(c) No Severance Benefits: In the event that this Agreement is terminated by OMNITRANS pursuant to this Paragraph IV(A)(1)(a) or (b), EMPLOYEE shall not be entitled to any severance benefits under this Agreement or under any other provision of law or OMNITRANS policy or procedure.

B. EMPLOYEE.

EMPLOYEE may terminate this Agreement at any time, with or without cause, by (1) giving OMNITRANS six (6) months advance written notice of his intent to terminate, or sooner by mutual agreement. In the event that EMPLOYEE exercises his right to terminate, or sooner by mutual agreement under this subparagraph IV(B) he shall not be entitled to the severance benefits set forth under Paragraph V or to any other similar termination benefits under law or OMNITRANS rules and regulations, provided however, that EMPLOYEE shall be entitled to payment for any unused vacation and sick leave earned and unused at the time his notice of termination is effective and in compliance with policy.

V.

SEVERANCE PAY: EARLY TERMINATION

OMNITRANS shall have the right to terminate EMPLOYEE's employment at any time during the term of this Agreement, with or without cause. In the event that EMPLOYEE's employment is terminated by OMNITRANS, except if terminated in accordance with subparagraph IV(A)(1)(a) or (b), EMPLOYEE shall be entitled to the severance benefits stated in this Paragraph V upon execution of an agreement with a general waiver of claims, as follows:

A. Computation: Items Included.

Severance benefits under this paragraph V shall be computed based upon EMPLOYEE's monthly base salary in effect at the time of termination.

B. Amount of Severance.

The amount of severance benefits shall be (1) a lump sum equal to the value of EMPLOYEE's monthly base salary at the time of termination times six (6) months and (2) continued payment by OMNITRANS of health and dental benefits in favor of EMPLOYEE and his eligible family for six (6) months, the duration of the severance benefits or until EMPLOYEE is re-employed, whichever is sooner.

C. Separately Negotiated: Waiver.

The parties expressly acknowledge and agree that these severance pay provisions have been independently negotiated. Acceptance at the time of termination by EMPLOYEE of the severance pay benefits provided by this paragraph shall operate as a full and complete waiver and release of any and all rights, claims, and/or causes of action which EMPLOYEE may have, or have had, at any time, in the past or in the future, arising out of EMPLOYEE's employment by OMNITRANS including but not limited to claims for wrongful termination. If EMPLOYEE wishes to retain any such rights, EMPLOYEE must decline to accept the severance benefits provided by this paragraph.

Acceptance of the severance benefits under this paragraph will operate as a general release on the part of EMPLOYEE as to all claims, known or unknown, and EMPLOYEE specifically waives the provisions of California Civil Code Section 1542 which provides:

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

Employee agrees to execute a separate release and waiver of all claims against OMNITRANS prior to any payment of severance benefits.

## VI.

### MISCELLANEOUS PROVISIONS

#### A. General Law.

This Agreement shall be interpreted and enforced in conformance with California law.

#### B. Entire Agreement.

This Agreement together with the exhibits represents the entire agreement between the parties and supersedes any prior agreements, written or oral, any and representations, written or oral, not expressly included herein.

#### C. Venue.

The venue for any litigation to interpret or enforce this Agreement shall be San Bernardino County Superior Court.

#### D. Integration Clause.

If any part, provision, paragraph or subparagraph of this Agreement shall be held to be void or unenforceable by a final judgment of a court of competent jurisdiction, then unless that provision is found in such proceeding to be material to this Agreement, said void or unenforceable provision shall be severed from this Agreement and the balance of this Agreement shall remain in full force and effect. In the event that the void or unenforceable provision is found to be material to this Agreement then the entire Agreement shall be voided.

#### E. Independent Review: Interpretation.

EMPLOYEE and OMNITRANS affirm in signing this Agreement that they have each had an opportunity to review and consider this Agreement and to have it reviewed and to receive

advice from independent advisors of their own choosing, including attorneys, and that each knowingly and voluntarily enters into this Agreement. EMPLOYEE and OMNITRANS further affirm that this Agreement was the mutual product of their negotiations, including give and take, and that neither party shall be considered the drafter of this Agreement such that the Agreement is interpreted against that party.

F. Public Record.

EMPLOYEE acknowledges that this Agreement, upon final execution, will become a public record under California law available for public inspection and copying.

G. Counterparts.

This Agreement may be signed in counterparts.

Dated: \_\_\_\_\_

OMNITRANS

By: \_\_\_\_\_  
Chair of the BOARD

APPROVED BY BOARD ACTION DATED: \_\_\_\_\_

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
EMPLOYEE

APPROVED AS TO FORM:

Dated: _____	JEAN-RENE BASLE County Counsel  _____ CAROL A. GREENE Deputy County Counsel.
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## **EXHIBIT A**

### **BEGINNING BENEFITS**

Management employee comprehensive medical benefit premiums, including eligible dependent coverage, are paid at 100% by the Agency. Medical benefits become effective the first of the month following 90 days. The Agency offers a choice of PacifiCare or Kaiser, both have a \$100 co-pay. Enclosed please find the summaries of coverage and enrollment plans. The health plans are under the Teamsters Trust and tied to the Memorandum of Understanding with the Teamsters. The plans include dental coverage through Liberty. Vision coverage is through VSP included with the Teamsters plan. Therefore, your date of coverage for health, etc., would be \_\_\_\_\_.

You will also be covered under the California State Public Employees' Retirement System (PERS – 2% at 55) beginning on your first day of employment and become vested after 5 years of continuous service. Omnitrans will pay both the employer and employee contributions to the plan for all Management employees which equals to 17.139% of salary as of this current date.

Management employees can participate in a ICMA 457 deferred compensation plan, as stated in your contract the Agency will pay \$22,500 annually towards your contribution. The contribution maximum for 2014 is \$17,500, with a catch up provision of \$5,000 for a maximum of \$22,500 per calendar year. There are other options available in your packet.

Life Insurance – This position receives term life insurance fully paid by the Agency at Group 1 level in the amount of \$300,000, and is with The Standard Insurance Company. Enrollment form and Beneficiary must be completed and submitted.

Agency pays Long Term Disability for the CEO/GM at a Group 1 level. Monthly Benefit is 70% of the first \$14,286 of monthly pre-disability earnings subject to policy.

Employees can participate in a voluntary Flex 125 Medical and Dependent Spending Plan as well as an Agency sponsored Employee Wellness Club at the transit facilities.

Agency offers voluntary dental plans with SafeGuard Health Plans, Inc., NX 115 or CENB7 110 and Delta #00923-0001 (PMI) that are offered outside of Liberty Dental at the employee's expense.

We also provide our employees with 11 fully paid Holidays.

We are excited that you accepted this contingent offer of employment, we will continue to the physical and drug screening. The background portion of the selection process has been completed. All candidates are required to pass each portion of the selection process to be

eligible to continue to the next phase. If you have any further questions or concerns, please feel free to contact me at (909) 379-7261

#### Additional Life Insurance

Dependent Life. Coverage amount is \$1,000. Monthly fee is \$44 (no matter how many dependents are covered). Paid by employee

Spouse Life: Coverage amount is \$2,000. Monthly fee is \$90. Paid by employee.

Spouse plus dependent Life: Coverage amounts are the same as above. Monthly fee remains \$.90. Paid by employee.

#### Optional Term Life Insurance:

Employee may apply for up to \$25,000. Rates are based on coverage amount elected, and paid by the employee.

- Per the MOU (Article 34) Coach Operators may apply for optional term life (not greater than \$20,000) if they have remaining benefit dollars. Any portion not covered by remaining benefit dollars will be paid for by the employee.