



BOARD OF DIRECTORS MEETING
WEDNESDAY, OCTOBER 1, 2014 – 8:00 A.M.
OMNITRANS METRO FACILITY
1700 WEST 5TH STREET
SAN BERNARDINO, CA 92411

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

A. CALL TO ORDER

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

B. ANNOUNCEMENTS/PRESENTATIONS

1. Next Board Meeting: Wednesday, November 5, 2014, at 8:00 a.m.
Omnitrans Metro Facility Board Room

C. COMMUNICATIONS FROM THE PUBLIC

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

D. POSSIBLE CONFLICT OF INTEREST ISSUES

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

E. CONSENT CALENDAR

The following items are expected to be routine and non-controversial. The Board will act upon them at one time without discussion, unless the Board directs that an item be held for further discussion under Agenda Item F, Discussion Items. Any person wishing to address consent items should address the Board under Agenda Item #10, Action on Consent Calendar.

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The following items do not legally require any public testimony, although the Chair may open the meeting for public input.

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G. PUBLIC HEARING

- | | |
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| 1. Public Hearing, California Government Code 3505.7, Impasse and Fact-Finding Report regarding Negotiations between Omnitrans and Amalgamated Transit Union Local 1704 | 263 |
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H. BOARD BUSINESS

Closed Session

1. Conference with Labor Negotiator, P. Scott Graham, concerning labor negotiations with Amalgamated Transit Union Local No. 1704 regarding the Coach Operator Unit, pursuant to Government Code Section 54957.6
2. Conference with Legal Counsel, pursuant to Government Code Section 54956.9(a), Case No. CIVDS1400420, Robert Miller vs. Omnitrans
3. Conference with Legal Counsel, Significant Exposure to Litigation, pursuant to Government Code Section 54956.9(b)(3)(A) – Two Cases
4. Conference with Legal Counsel pursuant to Government Code Section 54956.95(a) regarding Jacqueline Ray, Case #ADJ7551006

I. REMARKS AND ANNOUNCEMENTS

J. ADJOURNMENT

ITEM # D1

DATE: October 1, 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 October 1, 2014.

Item	Contract	Principals & Agents	Subcontractors
E4	Authorize Amendment No. 2 Contract IPMO14-116 As-Needed Scheduling Services	<i>APSI Construction Management Irvine, CA Ashok Apte President</i>	N/A
E5	Authorize Award Contract MNT14-108 Methane Detection System Services	<i>Lifecom, Inc. Huntington Beach, CA Charles E. Grigas President</i>	N/A
E6	Authorize Award Contract MNT14-218 Functional Assessment and Comparison of Omnitrans' Maintenance Department	<i>Vehicle Technical Consultants, Inc. Beaumont, CA Brent Sumrall, CEO</i>	N/A
E7	Authorize Award Purchase Order - sbX E Street Delineators/Channelizers	<i>Meyers & Sons Hi-Way Safety, Inc. Chino, CA Mike Rodgers President</i>	N/A

Item	Contract	Principals & Agents	Subcontractors
F4	<p>Authorize Award Contract SAS14-241 LNG Operations Risk Assessment</p> <p>And</p> <p>Authorize Award Contract FIN14-269 Compressed Natural Gas (CNG) Fueling Infrastructure Feasibility Study</p>	<p><i>Kazarrians & Associates Glendale, CA Mardy Kazarrians President</i></p> <p><i>Clean Energy Newport Beach, CA Peter Grace Senior Vice President, Sales & Finance</i></p>	<p>N/A</p> <p>N/A</p>
F5	<p>Authorize Award Contract MNT15-05 Axle Housings and Radius Rod Brackets</p>	<p><i>New Flyer Industries Canada ULC Winnipeg, Canada Phyllis Tapley, Director</i></p>	N/A
F6	<p>Authorize Award Contract MNT15-57 Thirteen Americans with Disabilities Act Certified Paratransit Vehicles</p>	<p><i>Creative Bus Sales Chino, CA Anthony Matijevich President Under CalACT Agreement</i></p>	N/A
F7	<p>Authorize Award Contract OPS15-55 Transit Operations Services During Work Stoppage</p>	<p><i>National Tour Integrated Resources, Inc. Rancho Santa Margarita, CA Johnny Capels President</i></p>	N/A
F8	<p>Authorize Award Contract ITS15-50 SAP Enterprise Resource Planning System Upgrade</p>	<p><i>TMR Management Group, Inc. Harrisburg, PA Manoj Gupta, CEO</i></p>	N/A

PSG/JS

CONFLICT OF INTEREST FORM

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

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

BOARD MEMBER INFORMATION

BOARD MEMBER NAME	CITY/COUNTY NAME	MEETING DATE

CAMPAIGN CONTRIBUTIONS

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

Board Member Signature

Date

ITEM # E1

**BOARD OF DIRECTORS' MEETING
MINUTES OF SEPTEMBER 2, 2014**

A. CALL TO ORDER

Chair Alan Wapner called the regular meeting of the Omnitrans Board of Directors to order at 8:00 a.m., Tuesday, September 2, 2014, at the Omnitrans Facility located at 1700 West 5th Street, San Bernardino, California.

1. Invocation
2. Pledge of Allegiance

BOARD MEMBERS PRESENT

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

BOARD MEMBERS NOT PRESENT

Mayor Pro Tem Paul Foster, City of Redlands
Supervisor Josie Gonzales, County of San Bernardino
Supervisor Robert Lovingood, County of San Bernardino
Supervisor Gary Ovitt, County of San Bernardino
Supervisor James Ramos, County of San Bernardino
Mayor Pro Tem John Roberts, City of Fontana
Supervisor Janice Rutherford, County of San Bernardino

OMNITRANS' ADMINISTRATIVE STAFF PRESENT

P. Scott Graham, CEO/General Manager
Diane Caldera, Director of Operations
Jack Dooley, Director of Maintenance
Marge Ewing, Director of Human Resources/Safety & Security
Sam Gibbs, Director of Internal Audit
Andres Ramirez, Program Manager
Jennifer Sims, Director of Procurement
Don Walker, Director of Finance
Wendy Williams, Director of Marketing/Planning
Oscar Tostado, Maintenance Manager
Maurice Mansion, Treasury Manager
Jeremiah Bryant, Service Planning & Scheduling Manager
Eugenia Pinheiro, Contracts Manager
Christine Van Matre, Contract Administrator
Mark Crosby, Loss Prevention Supervisor
Scott Begg, Planner I

LEGAL COUNSEL

Carol Greene

B. ANNOUNCEMENTS/PRESENTATIONS

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

C. COMMUNICATIONS FROM THE PUBLIC

Ericka Flores, representing CCAEJ (Center for Community Action & Environmental Justice) thanked the Operations and Safety Committee for notice of the upcoming meeting regarding the LNG tanks and confirmed that the community was looking forward to participating in the meeting.

D. POSSIBLE CONFLICT OF INTEREST ISSUES

There were no Conflict of Interest Issues identified.

E. CONSENT CALENDAR

1. Approve Board Minutes – August 6, 2014
2. Receive and File Executive Committee Minutes – June 6, 2014
3. Receive and File Plans and Programs Committee Minutes – April 15, 2014
4. Authorize Disposal of Surplus Equipment
5. Authorize CEO/General Manager to Sign Cooperative Service Agreement with Victor Valley Transit Authority
6. Adopt Limited English Proficiency (LEP) Policy and Language Assistance Plan

7. Authorization to De-Obligate and Re-Obligate Federal Transit Administration and State Transit Assistance Funds and Release Invitation for Bids, IFB-MNT-15-01, Engine Dynamometer
8. Increase CEO/General Manager's Authority, Retainer Agreement, Legal Services

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

F. DISCUSSION ITEMS

1) CEO/General Manager's Report

CEO/General Manager Scott Graham reviewed the CEO/General Manager's Report, and made note of the Operations & Safety Committee Meeting scheduled for September 10, 2014, at 9:00 a.m.

Jeremiah Bryant, Service Planning Manager, gave a brief presentation on the results of the Customer Satisfaction Survey that was conducted by the American Bus Benchmarking Group (ABBG).

Member Musser arrived at 8:08 a.m.; Member Dailey arrived at 8:10 a.m.; and Member F. Gonzales arrived at 8:11 a.m.

2) Authorize Award, Contract MNT14-243 (A-C), Transmission Parts

M/S (Eaton/Spagnolo) that authorized the CEO/General Manager to award Contract MNT14-243(C), as listed below, for the provision of Transmission Parts for an initial two (2) year period beginning September 22, 2014 and ending no later than September 21, 2016, with the authority to exercise three (3) single option years to extend the contracts to no later than September 22, 2019, in an aggregate amount of \$532,752, plus a 10% contingency of \$53,275, for a total not-to-exceed amount of \$586,027, should all option years be exercised.

Contract	Company
MNT14-243A	Dartco Transmission Sales and Service, Inc., Anaheim, CA
MNT14-243B	Selective Transit Parts, Inc., San Carlos, CA
MNT14-243C	New Flyer, Winnipeg, Canada

Motion was unanimous by Members present

G. PUBLIC HEARING

1. Continue Call for Public Hearing, California Government Code 3505.7, Impasse and Fact-Finding Report regarding Negotiations between Omnitrans and Amalgamated Transit Union Local #1704

Chair Wapner announced the call for public hearing as required by California Government Code 3505.7 as to the impasse and fact-finding report regarding negotiations between Omnitrans and ATU, Local #1704, will be continued until October 1, 2014 Meeting.

H. BOARD BUSINESS

There was no Closed Session.

I. REMARKS AND ANNOUNCEMENTS

There were no announcements.

J. ADJOURNMENT

The Board adjourned at 8:17 a.m. The next regular meeting is scheduled Wednesday, October 1, 2014, at 8:00 a.m., with location posted on the Omnitrans website and at Omnitrans' San Bernardino Metro Facility.

Prepared by:

Lourdes Sandoval, Administrative Secretary

ITEM # E2

**EXECUTIVE COMMITTEE MEETING
MINUTES
AUGUST 8, 2014**

A. CALL TO ORDER

The Executive Committee Meeting was called to order by Chair Alan Wapner at 2:10 p.m., Friday, August 8, 2014.

COMMITTEE MEMBERS ATTENDING

Mayor Pro Tem Alan Wapner, Board Chair
Mayor Pro Tem Sam Spagnolo, Vice Chair
Mayor Ed Graham, City of Chino Hills
Council Member Penny Lilburn, City of Highland
Council Member Dick Riddell, City of Yucaipa

OMNITRANS STAFF ATTENDING

P. Scott Graham, CEO/General Manager

B. ANNOUNCEMENTS/PRESENTATIONS

1. Next Committee Meeting: Wednesday, September 10, 2014, 10:00 a.m.
OmniTrans Metro Facility

C. COMMUNICATIONS FROM THE PUBLIC

There were no communications from the public.

D. POSSIBLE CONFLICT OF INTEREST ISSUES

There were no Conflict of Interest Issues.

E. DISCUSSION ITEMS

1. Approve Executive Committee Minutes – June 6, 2014

M/S (Spagnolo/Graham) that approved the Executive Committee Minutes of June 6, 2014. Motion was unanimous by Members present.
2. Placement of Solicitations (Requests for Proposals, Invitation for Bids) on Board of Directors' Meeting Agenda

Upon discussion, the Committee agreed that solicitations can be placed on the Consent Calendar of the Board Meeting Agenda, as the items could be pulled for discussion by a Board Member if desired.

3. Payment of Board Stipend – Board/Committee Meeting Attendance

The Committee discussed Omnitrans' current practice of paying the meeting stipend to Board Members regardless of what time the member arrived at the meeting and whether consideration should be given to changing this practice. After some discussion, the consensus of the Committee was to continue with the same practice, with the Board Chair agreeing to contact member cities if late arrival by a Board Member becomes an issue.

F. BOARD BUSINESS

There was no Closed Session Item.

G. REMARKS AND ANNOUNCEMENTS

There were no remarks or announcements.

H. ADJOURNMENT

The Executive Committee adjourned at 2:35 p.m. The next Executive Committee Meeting is scheduled Wednesday, September 10, 2014, at 10:00 a.m., with location posted on the Omnitrans website and at the Omnitrans San Bernardino Metro Facility.

Prepared by:

Mimi Sandoval, Administrative Secretary

ITEM # E3

**OPERATIONS AND SAFETY COMMITTEE
MINUTES
JULY 1, 2014**

A. CALL TO ORDER

The Operations and Safety Committee Meeting was called to order by Committee Chair Sam Spagnolo at 1:00 p.m., Tuesday, July 1, 2014.

1. Pledge of Allegiance
2. Roll Call – Self-Introductions

Committee Members Present

Mayor Pro Tem, Sam Spagnolo – Committee Chair
Supervisor Josie Gonzales, County of San Bernardino
Supervisor Gary Ovitt, County of San Bernardino
Council Member Dick Riddell, City of Yucaipa
Council Member John Roberts, City of Fontana
Mayor Ray Musser, City of Upland
Mayor Pro Tem Alan Wapner, City of Ontario

Committee Members Not Present

Mayor Pro Tem Ed Palmer, City of Rialto
Supervisor James Ramos, County of San Bernardino

OmniTrans Administrative Staff Present

Scott Graham, CEO/General Manager
Diane Caldera, Director of Operations
Jack Dooley, Director of Maintenance
Marjorie Ewing, Director of Human Resources
Jacob Harms, Director of Information Technology
Jennifer Sims, Director of Procurement
Don Walker, Director of Finance
Wendy Williams, Director of Marketing
Andres Ramirez, Construction Manager
Mark Crosby, Loss Prevention Supervisor

B. ANNOUNCEMENTS/PRESENTATIONS

There were no announcements.

C. COMMUNICATION FROM THE PUBLIC

There were no communications from the public.

D. POSSIBLE CONFLICT OF INTEREST ISSUES

There were no conflict of interest issues identified.

E. DISCUSSION ITEMS

1. Approve Operations and Safety Committee Meeting Minutes – March 24, 2014

M/S (Riddell/Musser) that approved the Committee Minutes of March 24, 2014. Motion was unanimous by remaining Members present.

Supervisor Ovitt arrived at 1:05 p.m. and Supervisor Gonzales arrived at 1:08 p.m.

2. Receive & File, Workers' Compensation Reporting Risk Mitigation

Director of Human Resources Marjorie Ewing presented an update to the information presented to the Committee in March on Omnitrans efforts to reduce workers' compensation claims. Since the appointment of a new Third Party Administrator (TPA) in December 2013, case reserves are projected downward through May 2014. The TPA is looking at things such as light duty programs to get employees back to work.

Another way to reduce workers' compensation claims is the installation of the rear-facing wheelchair securement on all sbX coaches, which is projected to reduce annual Operator workers' compensation claim costs by as much as \$81,623, based on research results received from other transit agencies. Further, by converting one forward facing wheelchair seat and retrofitting the 177 fixed route coaches with a rear facing wheelchair seat, Omnitrans would realize an even greater reduction in workers' compensation costs. The cost to retrofit the existing fleet of fixed route coaches is approximately \$316,000, with the return on investment dependent upon the percent of workers' compensation claims reduced. Additionally, if Omnitrans were to include the rear-facing wheelchair seat as part of future bus purchases, the cost to retrofit would be reduced.

Committee Members discussed whether Omnitrans should consider adding more wheelchair seats on the buses, using only rear-facing seats and whether there is a demand to modify existing buses with the new style seat.

CEO/General Manager Graham explained that the ADA (Americans with Disabilities Act) requires that the bus have at least one forward facing wheelchair seat and that the decision to add an additional wheelchair seat must be weighed carefully as it takes away seats for other passengers.

It was discussed and agreed that it will be important to the Board to know the number of wheelchair bound passengers using fixed route service before a decision is made to retrofit the entire fleet or increase the number of wheelchair spaces on the bus. Another

point to consider in this decision is the importance of keeping wheelchair passengers on fixed route service rather than the more costly Access service.

Ms. Ewing also touched on other preventive measures available to Coach Operators in addition to the rear-facing wheelchair, such as the Annual Training Certification Requirement, Ergonomic/Back Safety, stretching exercises, ergonomic seats, employee gym and Sick Leave Buy-Back, as well as future innovations such as the Pain Validity Testing produced by John Hopkins Hospital and C-MAP (Comprehensive Muscular Activity Profile).

The Committee also discussed tracking usage of the employee gym, being proactive with employees to prevent injury, usage of sick leave buy back, and how the pain validity testing and C-MAP profile would be administered.

This item is received and filed.

3. Receive and File, Report on Metrolink Bus Bridge Service

Director of Operations Diane Caldera presented information on the Metrolink Bus Bridge service, explaining that Omnitrans has a contract with the Southern Regional Rail Authority (SCRRA) to transport train passengers from one station to another as result of accidents or similar events.

A recent breakdown in communication for a May 13 incident in Corona whereby Metrolink did not contact Omnitrans to provide bus bridge assistance resulted in a review of Metrolink's notification process. Additionally, due to lack of equipment and manpower for a June 2nd request, Omnitrans took the opportunity to examine its internal process to ensure that we are responsive to requests for service.

As for Metrolink, it is creating a Bus Bridge Notification Group of who to notify by phone and email when a bus bridge is necessary. As for Omnitrans, although there must be a balance of whether to provide bus bridge service if our ridership is impacted, new procedures have been developed that dedicates the Marketing Training Bus for Bus Bridge Service, with other coaches used upon availability. While Coach Operators would be used first for the bridge service, if available, Omnitrans is required to adhere to Department of Transportation regulations for the number of drive hours (10), hours between sign off and sign on (8), and the daily work hours (15), unless it is an emergency. Field Supervisors and Maintenance personnel will be used as back up support.

The Committee emphasized the importance of providing the Bus Bridge Service to Metrolink, as it essentially benefits Omnitrans, as well. If passengers cannot rely on Metrolink, they will find other alternative transportation, which would require SANBAG to increase the subsidy to Metrolink, and that would have an impact on Omnitrans.

This item is received and filed.

F. REMARKS AND ANNOUNCEMENTS

There were no remarks or announcements.

G. ADJOURNMENT

The Operations and Safety Committee adjourned at 2:01 p.m. The next Committee Meeting will be scheduled and posted at Omnitrans and on the Omnitrans website.

Prepared by:

Vicki Dennett, Assistant to CEO/General Manager

ITEM # E4
DATE: October 1, 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 AMENDMENT NO. 2 – CONTRACT IPMO14-116
AS-NEEDED SCHEDULING SERVICES**
FORM MOTION

Authorize the CEO/General Manager to execute Amendment No. 2 to Contract IPMO14-116 with APSI Construction Management, of Irvine, CA, for As Needed Scheduling Services to increase the contract by an additional \$6,029.85, plus 3.27% Cost Allocation Plan, for a final project amount of \$87,653.36.

BACKGROUND

On December 4, 2013, the Board authorized additional spend authority to competitively awarded Contract IPMO14-116 awarding an increase of \$53,848, bringing the total contract amount to \$81,426.33, including a 3.27% Cost Allocation Plan of \$2,578.336.

Now that the construction activities for the sbX Bus Rapid Transit Corridor Project have concluded, the agreement with APSI is no longer needed. In order to close out the contract with APSI, an additional \$6,029.85 is needed to pay the final invoice.

FUNDING SOURCE

SOURCE	GRANT #	YEAR	PROJECT NAME	INTERNAL ORDER	AMOUNT
FTA	CA-90-Y775	2010	sbX E Street Corridor	X10G70036F	\$4981.62
STA	13-10-OMN-B	2012	sbX E Street Corridor	X10G70036S	\$1,245.41
			TOTAL		\$6,227.03

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

CONCLUSION

Approval of Amendment No. 2 for APSI Construction Management will enable staff to pay for services rendered and close out the APSI Construction Management contract in accordance with Omnitrans' Procurement Policies and Procedures.

PSG:JS:DN

**AMENDMENT 2 TO
CONTRACT IPMO14-116**

BETWEEN

OMNITRANS

AND

APSI CONSTRUCTION MANAGEMENT

Scheduling Services

This Contract Amendment, effective October 1, 2014 is entered into by and between Omnitrans (hereinafter called "Agency") and APSI Construction Management (hereinafter called "Contractor").

RECITALS

WHEREAS:

- I. Agency and Contractor have entered into Contract IPMO14-116 on November 1, 2013.
- II. Increase the total spend authority per Board of Directors approval on November 12, 2013 by \$53,848 for a not-to-exceed amount of \$78,848.
- III. Increase the total contract amount per the Board of Directors on October 1, 2014 by \$6,029.85 for a total final contract amount of \$84,877.85.

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

Delete in its entirety Number 3 (CONTRACT SUM) and replace with the following:

3. CONTRACT SUM

For CONTRACTOR's full and complete performance of its obligations under this Agreement, OMNITRANS shall pay CONTRACTOR on a FIXED PRICE basis at the fully burdened fixed rates shown in Attachment C, Labor Rates, 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 eighty-four thousand, eight hundred seventy-seven Dollars and eighty-five Cents (\$84,877.85) including all amounts payable to CONTRACTOR for all costs, including but not limited to, leases, materials, taxes, insurance and profit.

- IV. The amount set forth in this Amendment No. 2 comprises the total compensation due the Contractor, all subcontractors, and all unchanged work. By signing this Amendment No. 2, the contractor acknowledges and agrees on behalf of himself or herself, all subcontractors, and all suppliers that the stipulated amount is the full and final payment for all work performed under this contract and any Amendment to this contract, plus all payment for any interruption of schedules, extended field overhead costs, delay, and all impact, ripple effect or cumulative impact

of all other work under this contract. The signing of this Amendment indicates that the Amendment constitutes full mutual accord and satisfactions for the contract including any change, and that the change order the Amendment constitutes the total equitable adjustment owed the Contractor, all subcontractors, and all suppliers under this contract and any change to this contract. The Contractor on behalf of himself or herself, all subcontractors, and all suppliers, agrees to waive all rights without exception or reservation of any kind whatsoever to file any further claim related to this contract and any Amendment to this contract. No further claim or request for equitable adjustment of any type, for any reasonably foreseeable cause shall rise out of or as a result of this Amendment or the impact of this Amendment on the remainder of the work under this contract.

The Contractor further agrees to indemnify and hold the Omnitrans and its agents harmless from any further claims, requests for equitable adjustment, or damages raised by subcontractors or suppliers at any tier, as a result of the work under this contract.

The Contractor, on behalf of himself or herself, all subcontractors, and all suppliers, expressly waives the benefits of the provisions of Section 1542 of the California Civil Code, which reads as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBITOR.”

V. As hereby amended, Contract No, IPMO14-116 is considered closed.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment 2 effect as of the day and year first therein above written.

OMNITRANS


APSI CONSTRUCTION
MANAGEMENT CORPORATION

P. SCOTT GRAHAM
CEO/General Manager

ASHOK APTE
President

DATE

DATE

 DP

ATTACHMENT B

REGULATORY REQUIREMENTS

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

ITEM #E4	AS-NEEDED SCHEDULING SERVICES
ITEM #E5	METHANE DETECTION SYSTEM SERVICES
ITEM #F5	AXLE HOUSINGS AND RADIUS ROD BRACKETS
ITEM #F6	THIRTEEN AMERICANS WITH DISABILITIES ACT CERTIFIED PARATRANSIT VEHICLES
ITEM #F8	SAP ENTERPRISE RESOURCE PLANNING SYSTEM UPGRADE

Attachment B

REGULATORY REQUIREMENT

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REGULATORY REQUIREMENTS

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

RR-01

ADMINISTRATIVE CODE *

A. Applicability

This Article applies to all contracts.

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

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

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

C. Campaign Contributions

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

RR-02
DISCRIMINATION *

A. Applicability

This Article applies to all contracts.

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

RR-03
WHISTLEBLOWER REQUIREMENTS *

A. Applicability

This Article applies to all contracts.

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

RR-04
PUBLIC RECORDS ACT *

A. Applicability

This Article applies to all contracts.

- B.** Except as otherwise provided herein, all records, documents, drawings, plans, specifications, and all other information relating to the conduct of Omnitrans business, including all information and documents submitted by Contractor ("Records"), shall become the exclusive property of Omnitrans and shall be deemed public records. Said Records are subject to the provisions of the California Public Records Act (Government Code §6250 et. seq.). Omnitrans use and disclosure of its records are governed by this Act. Omnitrans will use its best efforts to inform the Contractor of any request for any financial records or documents marked "Trade Secret", "Confidential" or "Proprietary" provided by Contractor to Omnitrans. Omnitrans will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act.
- C.** In the event of litigation concerning the disclosure of any Records, Omnitrans sole involvement will be as a stakeholder, retaining the Records until otherwise ordered by a

court. The submitting party, at its sole expense and risk, shall be fully responsible for any and all fees for prosecuting or defending any action concerning the Records and shall indemnify and hold Omnitrans harmless from all costs and expenses including attorney's fees in connection with any such action.

RR-05

ACCESS TO RECORDS *

A. Applicability

This Article applies to all federally funded contracts.

- B. Contractor agrees to provide Omnitrans, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or the FTA's authorized representatives, including any FTA Project Management Oversight Contractor, access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a) 1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- C. If this Contract is for a capital project or improvement (defined at 49 U.S.C. 5302(a) 1) and was entered in to through other than competitive bidding, the Contractor shall make records related to this Contract available to Omnitrans, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- D. Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until Omnitrans, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

RR-06

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

A. Applicability

This Article applies to all federally funded contracts.

- B. This Contract includes, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the Contract provisions. All contractual provisions

required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008 and revised March 18, 2013 (including any changes), and are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Omnitrans requests which would cause Omnitrans to be in violation of the FTA terms and conditions.

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

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

RR-07

ENERGY CONSERVATION REQUIREMENTS

A. Applicability

This Article applies to all federally funded contracts.

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

RR-08

CIVIL RIGHTS REQUIREMENTS *

A. Applicability

This Article applies to all federally funded contracts.

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

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

C. Equal Employment Opportunity

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

RR-09**NO GOVERNMENT OBLIGATION TO THIRD PARTIES *****A. Applicability**

This Article applies to all federally funded contracts.

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

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

RR-10**PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS *****A. Applicability**

This Article applies to all federally funded contracts.

- B. The provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, shall apply to actions pertaining to this Contract. Upon execution of this Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining this Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.
- C. Contractor also acknowledges that this Contract is connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307 and if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on Contractor, to the extent the Federal Government deems appropriate.

- D. Contractor shall include this Article in each subcontract financed in whole or in part with Federal assistance provided by FTA. Contractor shall not modify the Article, except to identify the Subcontractor who will be subject to the provisions.

RR-11

SUSPENSION AND DEBARMENT*

A. Applicability

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

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

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

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

RR-12

RECYCLED PRODUCTS

A. Applicability

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

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

RR-13

CLEAN WATER AND CLEAN AIR REQUIREMENTS*

A. Applicability

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

B. CLEAN WATER REQUIREMENTS

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

C. CLEAN AIR

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

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

RR-14

COMPLIANCE WITH FEDERAL LOBBYING POLICY *

A. Applicability

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

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

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

RR-15

BUY AMERICA *

A. Applicability

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

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

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

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

RR-16

CARGO PREFERENCE*

A. Applicability

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

B. USE OF UNITED STATES FLAG VESSELS

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

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

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

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

RR-17 FLY AMERICA

A. Applicability

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

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

RR-18 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT *

A. Applicability

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

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

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

RR-19

DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26

Disadvantaged Business Enterprises

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

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

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

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

RR-20

ADA ACCESS

A. Applicability

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

B. Access Requirements for Persons with Disabilities

Contractor shall comply with:

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

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

RR-21

ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM *

A. Applicability

This Article applies to federally funded contracts for transit operations.

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

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

C. Certificate of Compliance

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

D. Drug and Alcohol Testing Program

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

E. Alcohol and Drug Free Workplace Program

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

RR-22

TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS *

A. Applicability

Subject to the limitations in Sections B, C, and D, this Article applies if this Contract involves transit operations to be performed by employees of a Contractor recognized by FTA to be a transit operator, and if FTA has determined that it is financed in whole or in part with Federal assistance.

B. General Transit Employee Protective Requirements

If FTA has determined that this Contract involves transit operations financed in whole or in part with Federal assistance (other than Federal assistance authorized by 49 U.S.C. § 5310(a)(2) or 49 U.S.C. § 5311), and if the U.S. Secretary of Transportation has determined that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for Omnitrans under this Contract, then Contractor shall perform the transit operations work under the Contract in compliance with terms and conditions, (a) determined by the U.S. Secretary of Labor to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. Department of Labor (“U. S. DOL”) guidelines at 29 C.F.R. Part 215, and any amendments thereto, and (b) stated in a U. S. DOL letter of certification to FTA, the date of which is set forth in the applicable Grant Agreement or Cooperative Agreement with Omnitrans, and which is incorporated in the Form of Contract as a Contract Document entitled “U. S. DOL Certification”.

C. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a) (2) for Elderly Individuals and Individuals with Disabilities

If FTA has determined that this Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for Omnitrans under the Contract, Contractor shall perform the Work in compliance with the terms and conditions determined, (a) by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto, and (b) stated in the U.S. DOL's letter of certification to FTA, the date of which is set forth in the applicable Grant Agreement or Cooperative Agreement with Omnitrans, and which is incorporated in the Form of Contract as a Contract Document entitled “U. S. DOL Certification”.

D. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas

If FTA has determined that this Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, Contractor shall comply

with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

E. Indemnity

Contractor shall defend, indemnify and hold harmless Omnitrans, and its Board Members, employees and agents from and against all liability, claims, demands actions, costs, judgments, penalties, damages, losses and expenses arising out of or in connection with Contractor's failure to comply with or failure to carry out its responsibilities under all applicable provisions of Sections B, C and D of this Article.

RR-23

BONDING REQUIREMENTS

Applicability to Contracts

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

- A. A bid guarantee from each bidder equivalent to ten (10) percent of the bid price. The "bid guarantees" shall consist of a firm commitment and may be in any of the following forms: (a) cash; (b) cashier's check payment to Omnitrans; (c) a certified check payable to the city; or (d) a bidder's bond executed by an admitted surety insurer. Such as a bid bond, certifies check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- B. A performance bond on the part of the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- C. A payment bond on the part of the Contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract.

RR-24

DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

Background and Application

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that "at least partly are financed by a loan or grant from the Federal Government." 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i) (5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or

repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

The clause language is drawn directly from 29 CFR 5.5(a) and any deviation from the model clause below should be coordinated with counsel to ensure the Acts’ requirements are satisfied.

Clause Language

Davis-Bacon and Copeland Anti-Kickback Acts

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a) (1) (v) (B) or (C) of this section, shall be paid to all workers performing work in the Classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - Omnitrans shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice,

trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, Omnitrans may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

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

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Omnitrans for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a) (3) (i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without

rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate

specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the

subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

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PRIVACY ACT - 5 U.S.C. 552

Applicability to Contracts

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

Flow Down

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

Model Clause/Language

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

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

- (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- (2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

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

Applicability to Contracts

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

Flow Down

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

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

appropriately short period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

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

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

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

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

judgment of Omnitrans shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Omnitrans.

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

Applicability to Contracts

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

Flow Down

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

Model Clauses/Language

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

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

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

Applicability to Contracts

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

Flow Down

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

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the Omnitrans. 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 # E5

DATE: October 1, 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 MNT14-108
METHANE DETECTION SYSTEM SERVICES**

FORM MOTION

Authorize the CEO/General Manager to award Contract MNT14-108 to Lifecom, Inc., of Huntington Beach, CA, for the provision of Methane Detection Monitoring System Services for a three-year base period in the amount of \$24,451, beginning October 9, 2014 and ending October 8, 2017, with the authority to exercise two (2) single option years in the amount of \$8,428 per year, and to extend the contract to no later than October 8, 2019 in the amount of \$41,307, plus \$10,000 for parts and repairs on an as needed basis, plus a contingency of \$5,131 for a total not-to-exceed amount of \$56,438, should all option years be exercised.

BACKGROUND

Omnitrans utilizes the services of a contractor for the calibration, testing, parts and repair of the methane detection systems at the East Valley and West Valley facilities.

On July 31, 2014, staff released Request for Quotes RFQ-MNT14-108. The solicitation was posted on Omnitrans' online bidding system. Three bids were received by the bid deadline of August 27, 2014 and deemed responsive.

COMPANY NAME	BASE YEARS BID AMOUNT
Lifecom, Inc.	\$24,451
Reliable Monitoring Services	\$32,400
EnviroSupply & Service, Inc.	\$40,700

The bid from Lifecom, Inc. is \$41,307 for maintenance services over the five-year contract period. The contract includes an additional \$10,000 for parts and repairs on an as-needed basis. The Independent Cost Estimate (ICE) of \$80,740 was based on current pricing. Award recommendation to the lowest responsive and responsible bidder represents a savings of \$23,562 and is therefore deemed fair and reasonable.

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

FUNDING SOURCE

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

Department	1200
Expenditure Code	505060

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

CONCLUSION

Award of this contract will allow for the continued maintenance and repair of these critical life/safety systems.

PSG:JMS:JC



CONTRACT AGREEMENT

between

LIFECOM, INC.
5085 Argosy Ave.
Huntington Beach, CA 92649
kurt@lifecominc.com

(hereinafter "CONTRACTOR")
Telephone: 714-892-4027

And

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

CONTRACT DOCUMENTS

CONTRACT NO. MNT14-108

Methane Detection System Services

Contract Amount: \$34,451

Omnitrans Project Manager:

Name: Mark Montgomery
Title: Facilities Manager
Telephone: (909) 379-7175
Email: mark.montgomery@omnitrans.org

Contract Administrator:

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



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ATTACHMENT A - SCOPE OF WORK

ATTACHMENT B - REGULATORY REQUIREMENTS

ATTACHMENT C - PRICING

This Agreement is made and entered into as of this Ninth day of October, 2014 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and LIFECOM, INC. (hereinafter referred to as "CONTRACTOR").

RECITALS

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

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

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

1. SCOPE OF WORK

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

2. PERIOD OF PERFORMANCE

The term of this Agreement shall be from the ninth day of October and continue in effect through October 8, 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 October 9, 2014 through October 8, 2019, which period encompasses the Initial Term, Option 1 and Option Year 2.

3. COMPENSATION

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 for services provided and TIME AND MATERIALS basis for parts and repairs, subject to the maximum cumulative payment obligation.

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Thirty-Four Thousand, Four Hundred Fifty One Dollars (\$34,451), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

4. INVOICING AND PAYMENT

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

CONTRACTOR shall submit invoices in duplicate to:

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

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

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

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

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

5. AUDIT AND INSPECTION OF RECORDS

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

6. NOTIFICATION

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

To OMNITRANS:

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

To CONTRACTOR:

Lifecom, Inc.
5081 Argosy Ave.
Huntington Beach, CA 92649
ATTN: Charles E. Grigas
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: Mark Montgomery, Facilities Manager

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

B. Contractor's Key Personnel

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

<u>Name</u>	<u>Role</u>
<u>Charles E. Grigas</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 on this RFQ shall have Hazardous Materials Endorsements on their Commercial Driver's License, and such other Endorsements as may be required by relevant laws and/or regulations.

Additional Insured:

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

15. INDEMNITY

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

16. REVISIONS IN SCOPE OF WORK

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

17. RIGHTS IN TECHNICAL DATA

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

18. OWNERSHIP OF REPORTS AND DOCUMENTS

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

19. OWNERSHIP RIGHTS

- A. In the event OMNITRANS rightfully obtains copies of Proprietary Data under the terms of the separate License Agreement and Escrow Agreement that govern rights in Documentation, Software and Intellectual Property created and/or developed by Contractor, its Third Party Software Contractors and its Suppliers as part of the Project, any derivative works and associated documentation created by or on behalf of OMNITRANS by Permitted Programmers (as defined in the License Agreement) shall be the sole and exclusive property of OMNITRANS (collectively, "OMNITRANS Intellectual Property"), and OMNITRANS may use, disclose and exercise dominion and full rights of ownership, in any manner in OMNITRANS Intellectual Property in connection with the use, operation and maintenance of a transportation system administered by OMNITRANS. No use of OMNITRANS Intellectual Property shall be made for any purpose other than in conjunction with a transportation

system administered by CONTRACTOR, and OMNITRANS shall not sell, lease, rent, give away or otherwise disclose any OMNITRANS Intellectual Property to any outside third party other than Permitted Programmers. To the extent there may be any question of rights of ownership or use in any OMNITRANS Intellectual Property, Contractor shall require all of its subcontractors and suppliers (including without limitation its Third Party Software Contractors) to assign to OMNITRANS, all worldwide right, title and interest in and to all OMNITRANS Intellectual Property in a manner consistent with the foregoing terms of this paragraph. Contractor shall execute any documents as OMNITRANS may from time to time reasonably request to effectuate the terms of this paragraph.

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

20. WORK FOR HIRE

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

21. SUBMITTAL OF CLAIMS BY CONTRACTOR

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

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

22. EQUAL OPPORTUNITY

CONTRACTOR shall not discriminate against, or grant preferential treatment to, any individual or group, or any employee or applicant for employment because of

race, age, religion, color, ethnicity, sex, national origin, ancestry, physical disability, mental disability, political affiliation, sexual orientation, marital status or other status protected by law. CONTRACTOR shall take action to ensure that applicants and employees are treated without regard to the above.

23. STANDARD OF PERFORMANCE

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

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

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

25. DISQUALIFYING POLITICAL CONTRIBUTIONS

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

26. COMPLIANCE WITH LAW

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

27. COMPLIANCE WITH LOBBYING POLICIES

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

28. PUBLIC RECORDS ACT

- A. All records, documents, drawings, plans, specifications and other material relating to conduct of OMNITRANS' business, including materials submitted by CONTRACTOR in its proposal and during the course of performing the Work under this Agreement, shall become the exclusive property of OMNITRANS and may be deemed public records. Said materials may be subject to the provisions of the California Public Records Act. OMNITRANS' use and disclosure of its records are governed by this Act.
- B. OMNITRANS will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act, including interpretations of the Act or the definitions of trade secret, confidential or proprietary. OMNITRANS will accept materials clearly and prominently labeled "TRADE SECRET" or "CONFIDENTIAL" or

"PROPRIETARY" as determined by CONTRACTOR. OMNITRANS will endeavor to notify CONTRACTOR of any request of the disclosure of such materials. Under no circumstances, however, will OMNITRANS be liable or responsible for the disclosure of any labeled materials whether the disclosure is required by law or a court order or occurs through inadvertence, mistake or negligence on the part of OMNITRANS or its officers, employees and/or contractors.

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

29. WAIVER/INVALIDITY

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

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

30. FORCE MAJEURE

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

31. CONFIDENTIALITY

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

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

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

33. GOVERNING LAW

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

34. MODIFICATIONS TO AGREEMENT

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

35. LICENSING, PERMITS AND INSPECTION COSTS

- A. The FIRM warrants that it has all necessary licenses and permits required by the laws of the United States, State of California, and the County of San Bernardino, the Local Jurisdictions, and all other appropriate governmental agencies, and agrees to maintain these licenses and permits in effect for the duration of the Agreement. Further, FIRM warrants that its employees, agents, and contractors and subcontractors shall conduct themselves in compliance with such laws and licensure

requirements including, without limitation, compliance with laws applicable to nondiscrimination, sexual harassment and ethical behavior throughout the duration of this Agreement. FIRM further warrants that it shall not retain or employ an unlicensed subcontractor to perform work on this Project. FIRM shall notify OMNITRANS immediately and in writing of its employees', agents', contractors' or subcontractors' inability to obtain or maintain, irrespective of the pendency of any appeal, any such licenses, permits, approvals, certificates, waivers, exemptions. Such inability shall be cause for termination of this Agreement.

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

36. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement MNT14-108, (2) Attachment A, Scope of Work, (3) provisions of RFQ-MNT14-108. and (4) CONTRACTOR's proposal dated August 27, 2014.

37. ENTIRE AGREEMENT

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

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

OMNITRANS

LIFECOM, INC.

P. SCOTT GRAHAM
CEO/General Manager

CHARLES E. GRIGAS
President

DATE

DATE

Federal Tax I.D. No.

CM_____

ATTACHMENT A – SCOPE OF WORK

MNT14-108 METHANE DETECTION SYSTEM SERVICES

A. INTRODUCTION

Contractor shall provide calibration and as-needed parts and repair services to Omnitrans' methane detection systems located at the San Bernardino and Montclair facilities.

1700 W. Fifth Street
San Bernardino, CA 92411

4748 Arrow Highway
Montclair, CA 91763

B. WORK HOURS

All work shall be conducted between the hours of 6:00 a.m. and 5:00 p.m., Monday thru Friday. Exceptions to this will be any legal holidays in which Omnitrans is closed. Any work conducted outside of this time frame will require the approval of the Facility Manager at least 24 hours in advance.

C. SCOPE OF WORK

1. Contractor shall provide all labor, materials, equipment, services and transportation, except as specifically excluded, to perform calibration and repair services at the following Omnitrans locations with the following equipment:

- a. 1700 West 5th Street, San Bernardino CA 92411

- 1) Quarterly Calibration of the following:
 - a) QEL Model M-Controller
 - b) 13 - QEL Model QTS-8000 sensors calibrated for methane
 - c) 2-QEL Model QTS-8000 sensors calibrated for carbon monoxide
- 2) Semi Annual Calibration of the following*:
 - a) Honeywell 301C Controller
 - b) Honeywell 301AP Remote Panel
 - c) 8- Honeywell Sensepoint XCD Infrared Sensors Methane
 - d) 1 - Honeywell Sensepoint XCD Electrochemical Sensors Hydrogen

** Note: This system is under construction and is scheduled to go into service sometime in the first quarter of 2015. The first calibration under this contract shall start August, 2015 for this new system. Dates may be adjusted according to changes that may occur in the construction schedule.*

- b. 4748 Arrow Highway, Montclair CA 91763

Quarterly Calibration of the following:

- a) Industrial Scientific Model 8000 Controller
- b) 14 Industrial Scientific Model Transmitter 2 sensors calibrated for methane

2. Calibration services shall be rendered every three months beginning August 2014. The Contractor will notify the project manager at least 48 hours prior to conducting the calibration. The Contractor will provide written documentation of the calibration results to the Project Manager within five (5) days from the completion of the work at each location. Contractor to list any deficiencies found during calibration, and provide a quotation for repairs within seven (7) days.
3. Omnitrans agrees to provide a scissor lift in good working order to the Contractor for the purpose of testing the sensors at each location. Contractor's service technicians are required to obtain equipment orientation from Omnitrans personnel prior to using the equipment. The Contractor shall be required to note any damage or defects PRIOR to using the equipment. Any damage caused to the equipment by the Contractor shall be repaired at the Contractor's expense.
4. The quarterly & semi-annual calibrations shall, at a minimum, consist of the following tasks:
 - a. All types of sensors to be calibrated at the appropriate LEL percentages.
 - b. All audible & visual alarms to be checked for proper annunciation.
 - c. All battery back-up devices to be tested for proper operation.
 - d. All auto-dialers to be tested for proper operation.
 - e. All remote enunciators to be checked for proper operation.
 - f. All dedicated exhaust fans to be checked for proper operation.
 - g. All dedicated motorized roll-up doors to be checked for proper operation.
 - h. All dedicated emergency CNG shut-down valves to be checked for proper operation.
5. Testing and verification for proper operation of the electrical power shunt trip shall be done in the month of November with prior approval from Omnitrans' Facility Manager. During the other quarterly/semi-annual calibration visits, the contractor shall disable the shunt trip from inadvertently shutting off power during the calibration procedures. The shunt trip must be re-enabled and verified prior to leaving the facility.
6. Due to the nature of operations at Omnitrans, the Contractor shall provide on-call service after hours and on weekends. The Contractor shall supply the Project Manager with the appropriate contact number(s) in order to obtain this service as necessary. Contractor shall respond to service calls within three (3) hours.
7. The Contractor shall provide a labor rate for repair service between the normal business hours of 6:00 am and 6:00 pm and the premium hours between 6:00 pm and 6:00 am. These rates shall be effective seven days a week, including normally recognized state and national holidays, for the term of the agreement.

E. WORKPLACE SAFETY

The Contractor shall ensure that all of its operations strictly adhere to all Federal, State, and Local safety and environmental laws and regulations. Omnitrans reserves the right to correct unsafe practices by the Contractor's employees, or to stop work until the Contractor makes the necessary corrections.

1. General Safety Requirements

- a. Protect the premises, workers, the public, Omnitrans' employees, Omnitrans' equipment, and Contractor's employees from work hazards.
- b. Adhere to fitness for duty requirements, appropriate working attire, and working area cleanliness.
- c. Enforce safety and security of the work site.
- d. Protect all open excavation areas with caution tape, security fence, and/or barricades.
- e. Plan and perform all work in a manner that will provide hazard-free work areas for Omnitrans personnel.
- f. Provide and post signs, place barricades and similar safe guards to direct traffic away from the site of work.
- g. Adhere to 5 mile per hour speed limit within bus yards.
- h. Remove barricades when area is capable of receiving traffic.
- i. Ensure that anything electrical is properly grounded and that all precautions are taken to prevent any chance of electrical shock or spark.
- j. Provide fire protection for contractor's material, facilities, and equipment. No fire protection equipment or personnel shall be provided by Omnitrans.
- k. Adhere to all safety requirements as required by regulatory agencies and industry safety standards, whichever is the stricter.

2. Smoking

Omnitrans uses designated areas for smoking. Smoking is not allowed at anytime in the bus yard, on or in any buildings, or by the entrances to any buildings. Smoking by employees of the Contractor, or his sub-Contractors, shall not create a hazardous condition for themselves, co-workers, or employees and property of Omnitrans.

3. Eye Protection

- a. Per Omnitrans' eye protection policy, ANSI Z87 approved eye protection shall be worn by all persons while conducting business outside the boundaries of the established "green zone". The policy also requires that eye protection be utilized if hazardous work is being conducted within the "green zone". The Contractor shall ensure that all of its employees have been provided eye protection that meets the requirement.

METHANE DETECTION SYSTEM SERVICES

- b. The project manager, or his designee, reserves the right to stop the Contractor's work in the event that a Contractor employee is in violation, and that work will remain stopped until the violation is corrected.

4. **Vests**

- a. Contractor and their employees working or performing services in outside work zones shall wear ANSI Class 2 Safety Vests. ANSI Class 2 Safety Vests must be worn at all times in the bus yard and in the relief vehicle locations.
- b. Safety Vests are not required while in designated, marked with painted green borders Safety Zones on Agency property or while on sidewalks, curbs, or raised pavement.

ATTACHMENT C - PRICING
MNT14-108 - METHAN DETECTION SYSTEM SERVICES

Item Num	Service Provided		Unit of Measure	Quantity	Discount	Line Price
1	Quarterly/Semi-Annual Service to include all labor and equipment, both locations; ANNUAL TOTAL - FULLY BURDENED	Base Year One	Lot	1		\$7,595.00
2	Quarterly/Semi-Annual Service to include all labor and equipment, both locations; ANNUAL TOTAL - FULLY BURDENED	Base Year Two	Lot	1		\$8,428.00
3	Quarterly/Semi-Annual Service to include all labor and equipment, both locations; ANNUAL TOTAL - FULLY BURDENED	Base Year Three	Lot	1		\$8,428.00
4	Quarterly/Semi-Annual Service to include all labor and equipment, both locations; ANNUAL TOTAL - FULLY BURDENED	Option Year One	Lot	1		\$8,428.00
5	Quarterly/Semi-Annual Service to include all labor and equipment, both locations; ANNUAL TOTAL - FULLY BURDENED	Option Year Two	Lot	1		\$8,428.00
						\$41,307.00
6	Laobr Rates for Parts and Repair, as needed - BURDENED	Labor Rate (6 a.m. to 6 p.m.) - Base Year 1	Hour	1		\$63.70
7	Laobr Rates for Parts and Repair, as needed - BURDENED	Labor Rate (6 a.m. to 6 p.m.) - Base Year 2	Hour	1		\$63.70
8	Laobr Rates for Parts and Repair, as needed - BURDENED	Labor Rate (6 a.m. to 6 p.m.) - Base Year 3	Hour	1		\$63.70
9	Laobr Rates for Parts and Repair, as needed - BURDENED	Labor Rate (6 a.m. to 6 p.m.) - Option Year 1	Hour	1		\$63.70
10	Laobr Rates for Parts and Repair, as needed - BURDENED	Labor Rate (6 a.m. to 6 p.m.) - Option Year 2	Hour	1		\$63.70
11	Laobr Rates for Parts and Repair, as needed - BURDENED	Labor Rate (6 p.m. to 6 a.m.) - Base Year 1	Hour	1		\$95.55
12	Laobr Rates for Parts and Repair, as needed - BURDENED	Labor Rate (6 p.m. to 6 a.m.)- Base Year 2	Hour	1		\$95.55
13	Laobr Rates for Parts and Repair, as needed - BURDENED	Labor Rate (6 p.m. to 6 a.m.) - Base Year 3	Hour	1		\$95.55
14	Laobr Rates for Parts and Repair, as needed - BURDENED	Labor Rate (6 p.m. to 6 a.m.) - Option Year 1	Hour	1		\$95.55
15	Laobr Rates for Parts and Repair, as needed - BURDENED	Labor Rate (6 p.m. to 6 a.m.) - Option Year 2	Hour	1		\$95.55
						\$796.25
						\$42,103.25

ITEM # E6

DATE: October 1, 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 MNT14-218
FUNCTIONAL ASSESSMENT AND COMPARISON OF OMNITRANS'
MAINTENANCE DEPARTMENT**

FORM MOTION

Authorize the CEO/General Manager to award Contract MNT14-218 to Vehicle Technical Consultants, Inc. of Beaumont, CA, for the provision of a Functional Assessment and Comparison of Omnitrans' Maintenance Department in the amount of \$37,160.

BACKGROUND

To ensure operational efficiency, the services of a consultant are requested to assess the Maintenance Department's organizational structure, department responsibilities, job descriptions, workflow, and staffing needs and skills in comparison to other transit properties of similar size. The Consultant shall analyze Omnitrans' Maintenance Department's practices against best practices performed throughout the transit industry and make recommendations that will generate efficiencies and enhance the performance of the department.

On June 9, 2014, Omnitrans' staff released Request for Proposals RFP-MNT14-218 which was posted on Omnitrans' online bidding system. Six proposals were received by the July 22, 2014 deadline. All were deemed responsive and evaluated in accordance with the evaluation criteria included in the RFP.

Those firms scoring 80 points and above were invited to submit a Best & Final Offer (BAFO). Although three of the firms reduced their prices, the outcome did not change.

The following firms are ranked from highest to lowest score:

		VTC	CGR	Capital	Matrix	Baker Tilley	Barbara Gannon
Criteria	Points Possible						
Quality of Work	40	36.60	29.80	30.00	31.60	28.00	26.40
Experience/Qualifications	30	30.00	24.20	22.60	21.40	20.60	20.20
Responsiveness / Understanding of Scope	10	9.40	9.00	8.40	9.00	7.80	7.60
Technical Total	80	76.00	63.00	61.00	62.00	56.40	54.20
Proposed Pricing		\$39,950	\$42,000	\$38,000	\$41,900	\$46,400	\$41,750
Price	20	19.02	18.10	20.00	18.14	16.38	18.20
TOTAL	100	95.02	81.10	81.00	80.14	72.78	72.40
BAFO Pricing		\$37,160	\$40,000	\$36,000	\$41,900		
Price Score	20	19.38	18.00	20.00	17.18		
FINAL SCORES	100	95.38	81.00	81.00	79.18		

Vehicle Technical Consultants, Inc. (VTC) ranked the highest technically and provides the overall best value. Their BAFO price is within the competitive range, is \$4,915 less than the Independent Cost Estimate of \$42,075, and is therefore deemed fair and reasonable.

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

FUNDING SOURCES

The cost associated with this procurement is budgeted in the Executive Office's Operating Budget as follows:

Department 1300
Expenditure Code 503990

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

CONCLUSION

By approving award of this contract, Omnitrans will have the ability to determine the needs of the Maintenance Department and the actions required to meet its maximum efficiency.

PSG:JMS:CV

ATTACHMENT A - SCOPE OF WORK

MNT14-218

FUNCTIONAL ASSESSMENT AND COMPARISON OF OMNITRANS' MAINTENANCE DEPARTMENT

1. PURPOSE

Consultant shall evaluate the Maintenance Department's organizational structure, department responsibilities, job descriptions, workflow, staffing needs and skills.

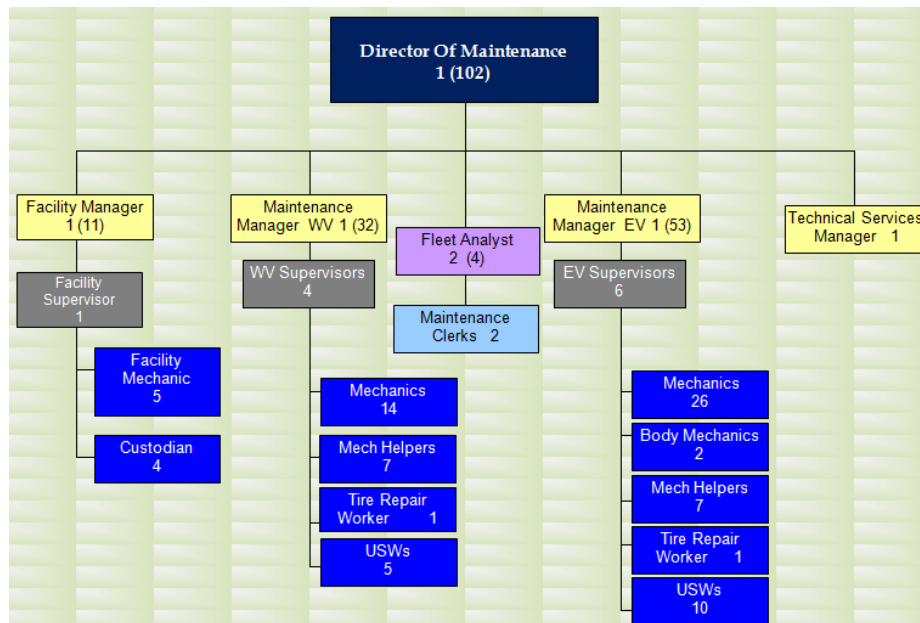
2. BACKGROUND

A. The Maintenance Department has a staff of 102 employees, of which 74 are represented. The department organization is illustrated in Figure 1. It is responsible for 184 heavy-duty buses, two main facilities located in San Bernardino and Montclair, multiple satellite locations, assorted light-duty non-revenue vehicles and equipment. The Director of Maintenance is responsible for the management of the department and its day-to-day activities.

B. Transit bus and facilities maintenance as evolved into a highly complex field. Since the formation of the Omnitrans Joint Powers Authority in 1976, technology has advanced and the regulatory requirements have changed and multiplied, impacting every position within the department. Several examples are:

- 1) Many department functions now flow through a computer maintenance management system (SAP), and the department now utilizes a fluid management system (FMS), Fleetwatch. Omnitrans has also added compressed natural gas facilities at its San Bernardino and Montclair locations.
- 2) Regulations include CHP Inspections, Southern California Air Quality Management Division (SCAQMD), Fire and Life Safety Systems, and regulations for facility systems, such as underground storage tanks, air tanks, elevators, backflow devices, etc.

Figure 1



3. SCOPE OF WORK

- A. Consultant shall 1) offer recommendations that enable the Maintenance Department to meet its responsibilities over the next five years and 2) create a comprehensive staffing plan for the Maintenance Department. This shall be consistent with Omnitrans' personnel policies and procedures. THIS IS NOT A TECHNICAL REVIEW OF ROLLING STOCK, EQUIPMENT OR FACILITIES.
- B. The Consultant shall analyze Omnitrans' Maintenance Department's practices against best practices performed throughout the transit industry and make recommendations that will generate efficiencies and enhance the performance of the department, to include:
 - 1) Current staffing structure and levels
 - 2) Current business procedures and practices:
 - a) Bus and facility maintenance
 - b) Training program
 - c) Asset management/retention program
 - d) Cost containment
 - 3) Maintenance safety practices
 - 4) Reporting/Dispensing Systems:
 - a) System Applications and Products (SAP)
 - b) Fleetwatch Fluid Management System (FMS)
 - c) Other Access databases
- C. While bus parts inventory, warranty and rebuild services impact the overall efficiencies of the Maintenance Department, the responsibility for these functions currently reside outside of the Maintenance Department, are located within the Procurement Department and must abide by FTA Circular 4220.1F. The Consultant may interview members of the Procurement Team as part of its fact-finding exercise in Task 1 (see Section 4, Tasks, below). However the focus should be on the Maintenance Department.

4. TASKS

The functional assessment contains three associated tasks.

A. TASK 1: DEPARTMENTAL ANALYSIS

- 1) Analyze the Maintenance Department's organizational structure, procedures, staff responsibilities, work flow and reporting relationships.

- 2) Perform benchmarking and/or analysis to identify how the Maintenance Department's organization, safety practices, duties and responsibilities compare to similar-sized transit agencies.
 - a) Analyze information provided by the Maintenance Department, to include organizational structure, key performance indicators (KPIs), staff duties and management plans.
 - b) Conduct analysis of the Maintenance Department compared to similarly-sized transit agencies' Maintenance Departments nationwide, utilizing information from the Federal National Transit Database (NTD) and other available sources for Maintenance Department structural comparison. Transit agencies used for comparison should be chosen based on similar service area characteristics and population, regulatory compliance and comparable services.
 - c) Evaluate staff's current responsibilities and make recommendations to maximize efficiencies and minimize any inefficiency.

B. TASK 2: RESULTS

- 1) Validate optimal Maintenance Department organizational structures for consideration, including the appropriate staffing duties, numbers, positions, efficiencies and responsibilities.
- 2) Develop a detailed "best practices template" for the Department's use to consider when analyzing processes to be more efficient, cost effective and safe.

C. TASK 3: FINAL REPORT

- 1) Prepare and submit a draft report in MS Word format containing findings and "best practices" to the Director of Maintenance within 90 calendar days of Notice to Proceed. This shall include areas for improvement and recommendations.
- 2) Prepare and submit a final report in MS Word format within 5 business days of Project Manager's approval of the draft report.
- 3) Prepare and present PowerPoint presentation slides highlighting report, findings and recommendations.

End of Scope of Work



CONTRACT AGREEMENT

between

Vehicle Technical Consultants, Inc.
31500 Grape Street
Lake Elsinore, CA 92532

(hereinafter "CONSULTANT")

Telephone: (951) 805-9217
Email: bsumrall@vtconsultants.net

And

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

CONTRACT DOCUMENTS

CONTRACT NO. MNT14-218

**Functional Assessment and
Comparison of Omnitrans'
Maintenance Department**

Contract Amount: \$37,160

OmniTrans Project Manager:

Name: Jack Dooley
Title: Director of Maintenance
Telephone: (909) 379-7183
Email: jack.dooley@omnitrans.org

Contract Administrator:

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



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ATTACHMENT A – SCOPE OF WORK

This Agreement is made and entered into as of this ___ day of _____ by and between Omnitrans (hereinafter referred to as "OMNITRANS") and Vehicle Technical Consultants, Inc., (hereinafter referred to as "CONSULTANT").

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, CONSULTANT 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. CONSULTANT 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 consultant or entity. CONSULTANT will cooperate fully with OMNITRANS' staff or other consultant or entity that may be providing similar or the same Work for OMNITRANS.

2. PERIOD OF PERFORMANCE

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

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

3. COMPENSATION

For CONSULTANT's full and complete performance of its obligations under this Agreement, OMNITRANS shall pay CONSULTANT on a LUMP SUM basis at the fully-burdened rates stated herein, and subject to the maximum cumulative payment obligation.

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Thirty-Seven Thousand One Hundred Sixty Dollars (\$37,160), including all amounts payable to CONSULTANT 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. CONSULTANT shall invoice OMNITRANS on a monthly basis no later than the 15th of each month. CONSULTANT shall furnish information as may be requested by OMNITRANS to substantiate the validity of an invoice.

CONSULTANT 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/services
- 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 CONSULTANT, 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, CONSULTANT shall immediately reimburse OMNITRANS the entire overpayment or, at its sole discretion, OMNITRANS may deduct such overpayment amount from monies due to CONSULTANT under this

Agreement or any other Agreement between OMNITRANS and CONSULTANT.

5. CONTRACT OPTION YEARS AND ADDITIONAL SERVICES

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

6. AUDIT AND INSPECTION OF RECORDS

CONSULTANT 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 CONSULTANT for a period of three (3) years after completion of this Agreement unless OMNITRANS' written permission is given to CONSULTANT to dispose of material prior to this time.

7. NOTIFICATION

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

To OMNITRANS:

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

To CONSULTANT:

Vehicle Technical Consultants, Inc.
31500 Grape Street
Lake Elsinore, CA 92532
Attn: Brent S. Sumrall, CEO
Email: bsumrall@vtconsultants.net

8. OMNITRANS' AND CONSULTANT'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: Jack Dooley, Director of Maintenance.

- 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 CONSULTANT which have not been performed to OMNITRANS' satisfaction.
 3. Subject to the review and acceptance by OMNITRANS, negotiate with CONSULTANT 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. Consultant's Key Personnel

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

<u>Name</u>	<u>Role</u>
Ralph Merced	Project Manager
Brent Sumrall	Assist Project Manager

Any propose/substitution or replacement by Consultant of Consultant'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 CONSULTANT based on OMNITRANS' confidence and reliance on the expertise of CONSULTANT's key personnel described above. CONSULTANT shall not reassign key personnel or assign other personnel to key personnel roles until CONSULTANT obtains prior written approval from OMNITRANS.

9. DISPUTE RESOLUTION

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

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

- D. Pending final resolution of a dispute under this section, proposer shall proceed diligently with performance in accordance with the Contract and Omnitrans' CEO/General Manager's recommended decision.

10. TERMINATION FOR CONVENIENCE

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

11. TERMINATION FOR BREACH OF AGREEMENT

- A. If CONSULTANT 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 CONSULTANT written notice of such default. If CONSULTANT 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 CONSULTANT's breach of this Agreement.
- B. If a federal or state proceeding for relief of debtors is undertaken by or against CONSULTANT, or if CONSULTANT makes an assignment for the benefit of creditors, then OMNITRANS may immediately terminate this Agreement.
- C. If CONSULTANT 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 CONSULTANT 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 CONSULTANT was not in default under the provisions of this Section, or that the default was excusable under the terms of this Agreement, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 8, Termination for Convenience.
- G. The rights and remedies of OMNITRANS provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

12. ASSIGNMENT

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

13. SUBCONTRACTING

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

Subconsultant's Name and Address	Work to Be Performed
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N/A	
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14. INDEPENDENT CONSULTANT

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

15. INSURANCE

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

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

Additional Insured:

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

16. INDEMNITY

CONSULTANT 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 CONSULTANT) arising from or connected with any alleged act and/or omission of CONSULTANT, its officers, directors, employees, agents, Subconsultants or suppliers. This indemnity shall survive termination or expiration of this Agreement and/or final payment thereunder.

17. REVISIONS IN SCOPE OF WORK

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

Upon execution of an amendment, CONSULTANT shall perform the Work, as amended.

18. RIGHTS IN TECHNICAL DATA

- A. No material or technical data prepared by CONSULTANT under this Agreement is to be released by CONSULTANT 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. CONSULTANT shall be permitted to retain copies of such items for the furtherance of its technical proficiency; however, publication of this material is subject to the prior written approval of OMNITRANS. The provisions of this paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.

19. OWNERSHIP OF REPORTS AND DOCUMENTS

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

20. OWNERSHIP RIGHTS

- A. In the event OMNITRANS rightfully obtains copies of Proprietary Data under the terms of the separate License Agreement and Escrow Agreement that govern rights in Documentation, Software and Intellectual Property created and/or developed by Consultant, its Third Party Software Consultants 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 CONSULTANT, 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, Consultant shall require all of its subconsultants and suppliers (including without limitation its Third Party Software Consultants) 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. Consultant 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 Consultant or its Third Party Software Consultants, and all Documentation and Software which is created by Consultant or its Third Party Software Consultants shall be Licensed Software or Licensed Documentation, as appropriate. All Licensed Software and Licensed Documentation shall be governed by the License Agreement by and between the parties of event date herewith.

21. WORK FOR HIRE

Any work created or produced as a part of this Agreement that may be defined under Section 101, Title 17, USC will be considered “work for hire” as it pertains to ownership rights. CONSULTANT, by his/her endorsement hereon agrees that all rights to any work(s) created or produced are waived, and that ownership rests with OMNITRANS. CONSULTANT 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, consultants or subconsultants.

22. SUBMITTAL OF CLAIMS BY CONSULTANT

CONSULTANT 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 CONSULTANT.

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

23. EQUAL OPPORTUNITY

CONSULTANT 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. CONSULTANT shall take action to ensure that applicants and employees are treated without regard to the above.

24. STANDARD OF PERFORMANCE

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

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

To ensure compliance with OMNITRANS' Ethics Policy, CONSULTANT shall provide written notice to OMNITRANS disclosing the identity of any individual who CONSULTANT 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 CONSULTANT. CONSULTANT's written notice shall indicate whether the individual will be an officer, principal or shareholder of the entity and/or will participate in the performance of this Agreement.

26. DISQUALIFYING POLITICAL CONTRIBUTIONS

In the event of a proposed amendment to this Agreement, CONSULTANT shall provide prior to the execution of such amendment, a written statement disclosing any contribution(s) of \$250 or more made by CONSULTANT or its subconsultant(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 CONSULTANT or subconsultant(s).

27. COMPLIANCE WITH LAW

CONSULTANT 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. CONSULTANT shall also comply with all Federal, state and local laws and ordinances.

28. COMPLIANCE WITH LOBBYING POLICIES

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

29. PUBLIC RECORDS ACT

- A. All records, documents, drawings, plans, specifications and other material relating to conduct of OMNITRANS' business, including materials submitted by CONSULTANT 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 CONSULTANT. OMNITRANS will endeavor to notify CONSULTANT 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 consultants.

- C. In the event of litigation concerning the disclosure of any material submitted by CONSULTANT, OMNITRANS' sole involvement will be as a stake holder, retaining the material until otherwise ordered by a court. CONSULTANT, at its sole expense and risk, shall be responsible for prosecuting or defending any action concerning the materials, and shall defend, indemnify and hold OMNITRANS harmless from all costs and expenses, including attorneys' fees, in connection with such action.

30. WAIVER/INVALIDITY

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

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

31. FORCE MAJEURE

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

32. CONFIDENTIALITY

CONSULTANT agrees that for and during the entire term of this Agreement, any information, data, figures, records, findings and the like received or generated by CONSULTANT 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, CONSULTANT agrees that it will continue to treat as private and privileged any information, data, figures, records, findings and the like, and will not release any such information to any person, firm, corporation or other entity, either by statement, deposition, or as a witness, except upon direct prior written authority of OMNITRANS.

33. CONSULTANT'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 CONSULTANT for advertising or public relations purposes prior to publication. CONSULTANT shall not allow OMNITRANS related copy to be published in its advertisements and public relations programs prior to receiving such approval. CONSULTANT shall ensure that all published information is factual and that it does not in any way imply that OMNITRANS endorses CONSULTANT's firm, service, and/or product.
- B. CONSULTANT 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 CONSULTANT receives a complaint from a citizen or the community, CONSULTANT shall inform OMNITRANS as soon as possible and inform OMNITRANS of any action taken to alleviate the situation.
- D. The provisions of this Article shall survive the termination or expiration of this Agreement.

34. GOVERNING LAW

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

35. MODIFICATIONS TO AGREEMENT

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

36. RIGHTS AND REMEDIES OF OMNITRANS FOR DEFAULT

- A. In the event any equipment, solvent, or service furnished by the Consultant in the performance of this contract should fail to conform to the specifications therefore, Omnitrans may reject the same, and it will thereupon become the duty of the Consultant to reclaim and remove the same forthwith, without expense to Omnitrans, and immediately to replace all such rejected equipment, solvent, or service with others conforming to such specifications; provided that should the Consultant fail, neglect, or

refuse to do so, Omnitrans will thereupon have the right to purchase in the open market, in lieu thereof, a corresponding quantity of any such equipment, solvent, or service and to deduct from any monies due or that may thereafter become due to the Consultant the difference between the price named in this contract and the actual cost thereof to Omnitrans.

- B. In the event the Consultant fails to make prompt delivery as specified of any equipment, solvent, or service, the same conditions as to the rights of Omnitrans to purchase in the open market and to reimbursement set forth above will apply, except as otherwise provided under Force Majeure.
- C. In the event of the cancellation of this contract either in whole or in part, by reason of the default or breach thereof by the Consultant, any loss or damage sustained by Omnitrans in procuring any equipment, solvent or service which the Consultant therein agreed to supply will be borne and paid for by the Consultant.
- D. The rights and remedies of Omnitrans provided above will not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.

37. 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 consultants and subconsultants 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 subconsultant to perform work on this Project. FIRM shall notify OMNITRANS immediately and in writing of its employees', agents', consultants' or subconsultants' 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. Consultant 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.

38. 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, (2) provisions of Solicitation RFP-MNT14-218 and (3) CONSULTANT's proposal dated July 22, 2014.

39. ENTIRE AGREEMENT

This Agreement, and any attachments or documents incorporated herein by inclusion or by reference, constitutes the complete and entire agreement between OMNITRANS and CONSULTANT 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

CONSULTANT

P. Scott Graham
CEO/General Manager

Brent S. Sumrall
CEO

Date

Date

Federal Tax I.D. No. 56-2384103

DP____

CM____

ITEM # E7

DATE: October 1, 2014

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

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE AWARD – PURCHASE ORDER
SBX E STREET DELINEATORS/CHANNELIZERS**

FORM MOTION

Authorize the CEO/General Manager to award a Purchase Order to Myers & Sons Hi-Way Safety, Inc. of Chino, CA, for the provision of 3,860 Delineators/Channelizers in an amount of \$65,580.40, and the authority to purchase up to an additional 1,000 Delineators/Channelizers in the amount of \$17,507.50, including sales tax and a Cost Allocation Plan (CAP) of 3.27%, for a total not-to-exceed amount of \$85,804.87.

BACKGROUND

On July 31, 2014, staff released Invitation for Bids IFB-IPMO15-26. Notices were published in two newspapers of general circulation and posted on Omnitrans' online bidding system. The Delineators/Channelizers will allow for increased safety along the sbX E Street Corridor where traffic concerns have been raised. The IFB included the Delineators/Channelizers, epoxy adhesive, and nuts, bolts and washers for installation.

Three bids were received electronically by the August 28, 2014 deadline. Two were deemed responsive.

Listed below are the bid prices:

Company	Myers and Sons Hi-Way Safety, Inc.	Three D Plastics, Inc.
Base Price	\$65,580.40	\$71,442.20
Option No. 1	\$17,507.50	\$19,670.00
Total	\$83,087.90	\$91,112.20

Award is recommended to a local company who represents the lowest responsive and responsible bidder. Price is deemed fair and reasonable based on competition. The Independent Cost Estimate of \$217,237.00 was based on previous purchases for Delineators/Channelizers. The award represents a cost savings of 61.75%.

These delineators will be installed by City of San Bernardino.

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

FUNDING SOURCE

The cost associated with this procurement is budgeted as follows:

FUNDING	GRANT	YEAR	PROJECT NAME	INTERNAL ORDER	AMOUNT
FTA	CA-90-Y333	2005	SBX-Delineators	X05TRE002F	\$57,796
FTA	CA-90-Y495	2007	SBX-Delineators	X07G70040F	\$28,009

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

CONCLUSION

Approving award of this purchase order will help to ensure the safety of our community and customers along the E Street Corridor.

PSG:JMS:DR

ITEM # E8

DATE: October 1, 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-ITS15-66
COMPUTER EQUIPMENT**

FORM MOTION

Authorize the CEO/General Manager to de-obligate \$398,772 of Federal Transit Administration (FTA) funds and \$100,257 of Prop 1B funds as shown in the Funding Source section, and re-obligate these funds to Computer Equipment.

Authorize the CEO/General Manager to release Invitation for Bids IFB-ITS15-66 for the provision of Computer Equipment.

BACKGROUND

Computer equipment consisting of ruggedized laptops, laptops, desktops, LED-Lit LCD monitors and vehicle computer mounts are used by the various departments of Omnitrans' on a daily basis to ensure smooth operations.

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 \$672,744.

FUNDING SOURCE

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

FUNDING	GRANT	YEAR	PROJECT NAME	INTERNAL ORDER	AMOUNT
Deobligate					
FTA	CA-90-Z112	2014	CCTV	D1422003F	\$398,772
Prop 1B		2014	CCTV	D1422003B	\$100,257
Reobligate					
FTA	CA-90-Z112	201	Computer Equipment	TBD	\$398,772
Prop 1B		2014	Computer Equipment	D1422023B	\$100,257
Funding					
FTA	CA-90-Y850	2011	Computer Equipment	D1122001F	\$39,424
FTA	CA-90-Y939	2012	Computer Equipment	D1222005F	\$100,000
STA	11-03-OMN-B	2011	Computer Equipment	D1122001S	\$9,291
STA	13-10-OMN-B	2012	Computer Equipment	D1222005S	\$25,000
Total					\$672,744

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

CONCLUSION

By proceeding with this solicitation, Omnitrans will achieve cost savings and benefit from economies of scale.

PSG:JMS:AA

Sun
Monday, July 28, 2014

ITEM #E9

THE SUN **MASS TRANSIT SYSTEMS**

New Omnitrans routes eliminate service on Colton Avenue

By [Sandra Emerson](#), *Redlands Daily Facts* POSTED: 07/28/14

REDLANDS>> Omnitrans will be making some changes to their bus routes in Redlands on Sept. 2, including the elimination of service along Colton Avenue.

Two bus routes that run through the city will be combined and in doing so, a 1.5-mile stretch along Colton Avenue will be eliminated to improve service efficiency, said Janice Kuhn, marketing specialist with Omnitrans.

The Omnitrans Board of Directors approved the changes in May.

The reason for the change was based on ridership numbers, Kuhn said.

"We do evaluate it," Kuhn said. "It's never say never. We could bring it back, but right now there was too much duplicative service on Route 8 so we combined it."

Zanetta van Putten, owner of Relationship Cafe on Colton Avenue in Redlands, has been trying to inform her therapy clients and others of the changes since she heard the news. She is concerned that her patients will have difficulty getting to her office as well as the Loma Linda University Medical Center and VA Hospital in Loma Linda.

She is also concerned about the impact the route change could have on her businesses and others in the area.

"This could impact the business in the area because the bus gets people into this area and helps people gain access to these retailers and food establishments," van Putten said. "The people who live in this community should also be their concern. How are they going to get their medical care in the Loma Linda area because the bus doesn't easily get them there."

Van Putten said she moved to her location because of the access her patients would have to public transportation.

"I do have clientele who come to me because of the bus access and I have clients who changed from their previous therapist because they found my location was easier to get to by the bus," van Putten said. "What's going to happen in the next few weeks when that's no longer the case? It's impacting a lot of people."

After the changes go into effect, riders will be able to use routes 8, 15 and 19 at Orange Route 8 and 19 at Alabama.

Route 9, San Bernardino-Redlands-Yucaipa, will be eliminated with certain sections combining with Routes 8 and 19.

Kuhn said she was informed by the planning department that the nearest stop will now be within 3/10 of a mile.

Van Putten said she is concerned about the terrain some of the riders with disabilities will have to cross to get to the new stops.

Omnitrans officials heard complaints from disabled riders over the changes made to service near Empire Bowl on Colton Avenue in Redlands, according to OmniConnects—Omnitrans' fiscal year 2015-20 short-range transit plan released in April.

A decision was made to keep the change based on the availability of adjacent service on another route and the ridership levels being too low to sustain service, according to the plan.

Redlands Mayor Pete Aguilar said in an email that as a general benchmark, Omnitrans requires 80 percent farebox recovery for all lines. Prior lines in Redlands were canceled for this reason, he said.

Van Putten has reached out to city officials and has been trying to inform her residents of the changes she discovered.

"I feel the word's not getting out," van Putten said. "I'm trying to get the word out to the public that this is happening. They need to be aware what's happening and they also need to be informed of how to notify Omnitrans."

In addition to the route changes, fares will also go up starting Sept. 2

Riders' current passes will continue to be honored after Sept. 2

Traditionally, Omnitrans raised fares every two years, but due to the economic downturn they have not imposed increases since 2009, according to a message from the Omnitrans general manager P. Scott Graham.

They will return to their biennial increases with three increases planned between 2015 and 2020.

Mayor Pro Tem Paul Foster, a member of the Omnitrans Board of Directors said he is aware of the changes, but has not seen any ridership numbers related to the route changes.

"They don't make these decisions haphazardly or lightly because they know it impacts people's lives in terms of getting from place to place," he said.

Information will be posted on the Omnitrans website this week to update riders on the changes.

Kuhn said although the changes have been approved and will go into effect in September, riders are always welcome to contact Omnitrans with their feedback.

For more information visit omnitrans.org.

Daily Bulletin
Thursday, August 21, 2014

DAILY BULLETIN

Chaffey College ends lockdown; no threat found



Armed sheriff deputies and Chaffey College police search the campus Thursday for a suspicious man on campus. The Chaffey College campus in Rancho Cucamonga was lockdown by campus police at approximately 1:15 p.m. Thursday August 21, 2014 after a report was made about a male with anti-government patches on his vest, wearing black combat boots, black pants and a black backpack. The threat was never confirmed and no one was taken into custody. The campus was under lockdown for over an hour before it was lifted. Classes have been cancelled for the rest of the day. (Will Lester/Inland Valley Daily Bulletin)

By [Greg Cappis](#), *Inland Valley Daily Bulletin*
and [Joe Smilor](#), *San Bernardino Sun*

POSTED: 08/21/14, 2:32 PM PDT



Armed sheriff's deputies and Chaffey College police search the Rancho Cucamonga campus Thursday for a suspicious man. The Chaffey College campus was in lockdown after a report was made about a suspicious person. will lester — staff photographer

RANCHO CUCAMONGA >> A report of a suspicious man carrying a suspicious backpack forced a two-hour lockdown of Chaffey College on Thursday before school officials canceled the campus alert around 3 p.m. after San Bernardino County sheriff's deputies conducted a search and found no threat.

Classes were canceled for the rest of day.

At the height of the incident, one college employee sent an email saying "that the campus is swarming with police carrying assault rifles plus a helicopter in the air."

Sheriff's spokeswoman Teresa McMahon said deputies looked into classrooms but weren't searching under desks at the campus where they have performed active shooter training drills in the past.

"We're really familiar with the campus here and how it all works," she said.

Authorities had received a report about a suspicious man dressed in military boots and dark clothing with anti-government patches on his backpack, but deputies did not find him. McMahon said they would review footage from campus and Omnitrans bus security cameras.

During the lockdown, which was initiated by the college, school officials asked everyone via Twitter to stay in place and wait for law enforcement directions and thanked them "for their patience as the Sheriff's Department clears the campus."

Andrew Heakes, 17, said a fellow student notified their art class of the lockdown after returning from the bathroom.

About 20 minutes later, an announcement was delivered via the school's intercom system, he said.

"They announced it pretty late," he said.

His fundamentals of 2-D design class continued as usual during the lockdown.

Some students left in the middle of the lockdown because they are adults in charge of their own safety, and there was no established crime scene, McMahon said.

Deputies checked cars for the suspect or his backpack as students departed campus

The lockdown comes three days after South Pasadena police arrested two students suspected of planning a mass shooting that targeted teachers and students at South Pasadena High School.

School officials reported the suspected plot to police on Aug. 14, but did not say how they learned of it.

The pair had been under surveillance since the report, South Pasadena police Sgt. Brian Solinsky said.

He would not elaborate on the plans or what form they took, but Solinsky said they were "very specific" and included named targets.

"This is a prime example of school officials recognizing suspicious behavior," Solinsky said in a statement.

"It was this information that helped prevent a horrific tragedy."

Police found no weapons in either of the student's possession or in their homes, authorities said.

"Any time something like this comes up, it certainly causes great concern, not just for South Pasadena, but public schools across the country," South Pasadena Unified School District Superintendent Geoff Yantz said.

Although police did not find guns or other weapons in the boys' possession, officials said the boys had been researching weapons on the Internet.

The two teenage boys on Wednesday denied allegations they planned a shooting at South Pasadena High, officials said.

The 16- and a 17-year-old boys each face one count of making criminal threats against another teen, said spokesman Greg Risling of the District Attorney's Office.

Their closed-session arraignment took place at Pasadena Juvenile Court on Wednesday afternoon.

Staff Writers Grace Wong, Al Noseworthy, Venusse Navid and Zen Vuong contributed to this report.

Fontana Herald News

Thursday, August 21, 2014

Fontana Herald News

Omnitrans will raise its bus service fares in San Bernardino County on Sept. 2

Posted: Thursday, August 21, 2014 9:00 am

Omnitrans will raise fares for its bus service in San Bernardino County on Sept. 2.

The same day, the transit agency will implement changes designed to improve connectivity and maximize productivity, including realignment of several bus routes, discontinuance of OmniLink service and increased weekend service on the Route 215 Freeway express route.

A one-way bus trip will increase from \$1.50 to \$1.75 while the 1-day pass rate will rise from \$4 to \$5. A 31-day pass goes from \$47 to \$55 and a 7-day pass is \$18, up from \$15.

This marks the first time that Omnitrans has increased fares in five years.

Discounted fares apply to persons with disabilities, seniors age 62 and up, and youth age 18 and under. Fare increases also affect Access service, which transports persons with disabilities who qualify under Americans with Disability Act (ADA) guidelines. The new Access base fare will be \$3.25.

With the sbX rapid transit line now in operation in San Bernardino, Omnitrans is realigning several local routes to improve connections and streamline service.

Route 9, which now serves Yucaipa, Redlands, Loma Linda and San Bernardino, is being eliminated; however, realigned Routes 5, 8 and 19 will cover the majority of Route 9's path and provide increased service frequency on weekdays.

To keep up with growing demand, Route 215 freeway express service between downtown San Bernardino and Riverside will offer 30-minute frequency on weekends, up from hourly.

Meanwhile, frequency on Route 20 in Fontana will change to hourly from 30 minutes due to low ridership demand, according to Omnitrans.

Complete information on the Omnitrans September service and fare changes is available at <http://www.omnitrans.org>.

INLAND NEWS TODAY

www.inlandnewstoday.com

Omnitrans changes fares, schedules

FARES/Tarifas		Current	New
BUS/Autobús		Actuales	
Cash <i>Dinero</i>	Full Fare <i>Tarifa Completa</i>	\$1.50	\$1.75
	Senior/Disability <i>Ancianos/Personas Incapacitadas</i>	\$0.60	\$0.75
31-Day Pass <i>Pase de 31 Dias</i>	Full Fare <i>Tarifa Completa</i>	\$47.00	\$55.00
	Senior/Disability <i>Ancianos/Personas Incapacitadas</i>	\$23.50	\$27.50
	Youth/Joven	\$35.00	\$41.00
7-Day Pass <i>Pase de 7 Dias</i>	Full Fare <i>Tarifa Completa</i>	\$15.00	\$18.00
	Senior/Disability <i>Ancianos/Personas Incapacitadas</i>	\$7.00	\$8.00
	Youth/Joven	\$11.00	\$14.00
1-Day Pass <i>Pase de 1 Dia</i>	Full Fare <i>Tarifa Completa</i>	\$4.00	\$5.00
	Senior/Disability <i>Ancianos/Personas Incapacitadas</i>	\$1.85	\$2.25
1-Day 10-Pack <i>10 Pases de 1 Dia</i>	Full Fare <i>Tarifa Completa</i>	\$36.00	\$45.00
	Senior/Disability <i>Ancianos/Personas Incapacitadas</i>	\$15.50	\$20.00
Access (1)			
Cash/Ticket <i>Dinero/Boleto</i>	1-3 zone/zona	\$2.75	\$3.25
	Additional zones/zonas	\$1.00	\$1.00
	Beyond boundary fee	\$5.00	\$5.00

omnitrans.org

INLAND EMPIRE - (INT) - Omnitrans riders are getting used to several changes.

Fares have gone up and schedules and some routes are different.

Omnitrans Wendy Williams discusses the service changes that have kicked in.

"They are particularly in the East San Bernardino Valley to improve connectivity, minimize transfers and improve the frequency of service. Some of this is tied to San Bernardino's new sbX bus line that started earlier this year".

Omnitrans' fare increases are the first in 5-years.

Story Date: September 3, 2014

THE SUN

\$13M awarded for transportation upgrades in San Bernardino County

By [Jim Steinberg](#), *The Sun*

POSTED: 08/31/14, 5:23 PM PDT | UPDATED: 2 DAYS AGO

at a glance

State transportation awards

Apple Valley: \$1.095 million (Safe Routes to School)

Colton: \$265,000 (Active Transportation Plan)

Omnitrans: \$3.5 million (approximate)

Ontario: \$1.164 million (Safe Routes to School)

Rialto: \$1.45 million (Safe Routes to School)

SanBAG: \$400,000 (Safe Routes to School)

SanBAG: \$4.679 million (Metrolink Access Improvement)

Yucaipa: \$872,000 (Safe Routes to School)

SOURCES: Southern California Association of Governments, San Bernardino Associated Governments

The California Transportation Commission has awarded more than \$13 million to San Bernardino County transportation agencies and cities from Yucaipa to Ontario, much of it for developing safe routes to schools.

The big overall winner was San Bernardino Associated Governments, the transportation planning agency for the county, which will receive \$4.7 million for building pedestrian and bicycle improvements at six train stations from Montclair to San Bernardino.

Money will fund improvements for sidewalks, crosswalks, bike paths, bike lockers and other projects "to encourage and make it more attractive for people to walk or bicycle to the train station," said Josh Lee, a SanBAG transportation planning analyst.

Improvements will vary with each station in Montclair, Upland, Rancho Cucamonga, Fontana, Rialto and San Bernardino, said Steve Smith, SanBAG's director of planning.

The six-county Southern California Association of Governments received \$115.2 million to fund 68 projects, including \$2.3 million for a regional safety and encouragement campaign.

An average of 38 pedestrians or bicyclists are injured or killed every day in the SCAG region, the agency said in a statement.

“This kind of commitment to active transportation programs will reap long-lasting benefits in terms of health, safety and the sustainability of our communities,” said Hasan Ikhrata, executive director of SCAG.

Omnitrans — the public bus agency serving communities from Chino Hills on the west to Yucaipa on the east, received a \$3.5 million Active Transportation grant for pedestrian access to rapid-transit stations that will be built as part of the West Valley Connector Corridor project, said Nicole Ramos, Omnitrans marketing director.

The West Valley Connector Corridor project, currently in the planning stages, will be a rapid or bus rapid transit line, proposed to begin operation in 2017.

It will go through Fontana, Rancho Cucamonga, Ontario, Montclair and Pomona, providing service 10 percent to 15 percent faster than the existing local bus service, Ramos said.

Primarily the grant will be used to improve safe pedestrian access to the transit stations by constructing ADA-accessible concrete boarding areas at stations, and connecting ADA-accessible pathways within one-half mile radius of all stations — including repair or replacement of sidewalk or curb ramps and improved pedestrian crosswalks where needed, Ramos said.

Rialto received \$1.45 million for its Safe Routes to School program. The money will be used to fund a comprehensive, multi-year plan that will address street deficiencies, parent education and encouragement as well as enforcement actions, said Katie Nickel, senior analyst.

Priorities will be established, she said.

Ontario received \$1,164 million for its Safe Route to School program, which will be spent to put sidewalks at or near Bon View, Corona, Vineyard and Euclid elementary schools, City Manager Al Bowling said.

Apple Valley received \$1.095 million and Yucaipa \$872,000 for their Safe Routes to School programs.

Colton received \$265,000 for its Active Transportation Plan while SanBAG received an additional \$400,000 for its Safe Routes to School program.

September 1, 2014

sbsun.com

TRANSPORTATION

Region awarded \$13M for upgrades

Much of the money is for developing safe routes to local schools

By Jim Steinberg

jim.steinberg@langnews.com
@JamesDSteinberg on Twitter

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UPGRADES » PAGE 6

Upgrades

FROM PAGE 1

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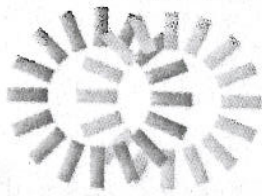
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SOURCES: Southern California Association of Governments, San Bernardino Associated Governments

September 2, 2014



REDLANDS Passenger Rail Project



Notice of Availability of a Draft Environmental Impact Statement / Environmental Impact Report for the Redlands Passenger Rail Project State Clearinghouse No. 2012041012

What is being proposed? San Bernardino Associated Governments (SANBAG) is proposing the development of new railroad infrastructure along an approximate nine-mile section of rail corridor owned by SANBAG and commonly referred to as the Redlands Subdivision. The Project would include the development of four new stations consisting of boarding platforms with supporting amenities and parking and a new train layover/storage facility.

Why this notice? The Federal Transit Administration (FTA) is the Federal Lead Agency for the preparation of an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) for the Redlands Passenger Rail Project (RPRP or Project). SANBAG is the Local Lead Agency for the preparation of an Environmental Impact Report (EIR) in accordance with the California Environmental Quality Act (CEQA) for the Project. The purpose of this Notice of Availability (NOA) is to notify agencies, organizations, and individuals that a joint Draft EIS/EIR is now available for review and comment.

When is the public review and comment period? A public review and comment period began on August 6, 2014 and will close at 5:00 p.m. on September 29, 2014. Public agencies and the public are invited to comment on the Draft EIS/EIR.

Where can you view a copy of the Draft EIS/EIR? A copy of the joint Draft EIS/EIR is available for public review during business hours at the following locations: SANBAG, 1170 West 3rd Street, 2nd Floor, San Bernardino, CA; City of San Bernardino, 300 North "D" Street, 3rd Floor, San Bernardino, CA; Norman F. Feldheim Public Library, 555 West 6th Street, San Bernardino, CA; the City of Redlands, Development Services Department, Planning Division, 210 East Citrus Avenue, Redlands, CA; and University of Redlands Library, 1249 E. Colton Avenue, Redlands, CA. An electronic version of the document may be downloaded from www.sanbag.ca.gov.

How can you comment on the Draft EIS/EIR? Written comments may be submitted to Mitchell A. Alderman, P.E., Director of Transit & Rail Programs, SANBAG, 1170 West 3rd Street, 2nd Floor, San Bernardino, CA 92410 or emailed to RPRP_PUBLIC_COMMENTS@sanbag.ca.gov. Comments must be received no later than 5 p.m. Pacific Daylight Time on September 29, 2014. For more information or to request copies of the document, contact Tim Watkins at SANBAG, (909) 884-8276, twatkins@sanbag.ca.gov or Dominique Paukowits at FTA, (415) 744-2735, dominique.paukowits@dot.gov.

Public Meetings

Two public meetings to comment on the Draft EIS/EIR will be held on (1) September 4, 2014, 5:00 – 7:00 PM, at the ESRI Café, 380 New York Street, Redlands, CA 92373; and (2) September 9, 2014, 5:00 – 7:00 PM, at "The Hotel," 285 East Hospitality Lane, San Bernardino, CA 92408.

THE SUN

Commentary

Meeting county's transportation challenges

By Raymond Wolfe

Addressing the transportation needs of a rapidly growing population is the ongoing challenge for the San Bernardino Associated Governments (SanBAG). While we remain a freeway-centric region and rely heavily on our local freeways and roadways to get people and goods from here to there, it is incumbent upon us as a regional transportation agency that we also look for solutions that include a multi-modal approach to the transportation demand.

We are stepping up to those challenges, reflected by the development of our transit and rail programs.

Recently, SanBAG and Omnitrans, the transit operator in the San Bernardino Valley, celebrated the opening of a Bus Rapid Transit (BRT) line in San Bernardino County. We are also examining ways to provide enhanced transit connections through our participation in the ARRIVE (Advanced Regional Rail Integrated Vision — East) Project to help identify ways we can make San Bernardino County a commercial, residential and recreational destination by providing improved mobility options.

Commuter rail projects like the currently under-construction Downtown San Bernardino Passenger Rail Project and the future Redlands Passenger Rail Project round out a comprehensive strategy for providing alternatives to commuters using their cars.

Together, these projects showcase a multi-modal, integrated transportation system that also helps spur development.

Transit-oriented development around station hubs associated with each of these modes of transportation creates the potential for new economic generators and the opportunity for livable, sustainable communities.

For example, the Redlands Passenger Rail Project is already stimulating private investment for development of connectivity to the world's largest geographic information system provider, and launches the discussion on how to link to area airports. Other partners like the University of Redlands are developing plans for creating housing and recreational opportunities near the rail line, knowing that the future of their community and student population includes an option for walking to and from transportation stations.

Bottom line is that we live, work, shop, dine and play in a fast-growing, dynamic region, and SanBAG is committed to providing the citizens of San Bernardino County with transportation options that keep them moving in the right direction.

Whether traveling by car, bus or train, our goal is to get you there in a safe, efficient, effective way. *Raymond Wolfe is executive director of San Bernardino Associated Governments.*

A multi-modal, integrated transportation system helps spur development.

Future projects in IE discussed during summit

THE SUN
September 6, 2014

By Neil Nisperos

neil.nisperos@langnews.com

@ReporterNeil on Twitter

Major Inland Empire transportation projects, such as the 91 Freeway widening, the Colton Crossing rail overpass, and extending the Gold Line light rail system eastward, were addressed Friday as part of the annual Southern California infrastructure conference, known as the Mobility 21 Summit, in Anaheim.

In the shadow of the Disneyland Monorail, transportation leaders, business community members, and elected officials from across the

SUMMIT PAGE 4

Summit

FROM PAGE 1

region met at the summit to address issues and find solutions toward creating better transportation infrastructure for the area.

The annual conference, held at the Disneyland Hotel, is the largest one-day transportation event in California. About a thousand people attend to meet and discuss transportation strategies and solutions. This year, the chairman of the Mobility 21 board of directors is Paul Granillo, president and CEO of the Inland Empire Economic Partnership.

With 4.3 million people in the Inland Empire, and another 2 million people expected to move into the region in the next 20 years, Granillo said the event is an important place for different agencies and stakeholders to form partnerships in order to better serve the growing transportation needs of the area.

"Mobility 21 brings together the heads of the transportation agencies in Los Angeles, Ventura, Orange, San Bernardino and Riverside counties, and they're paired with business organizations like the Inland Empire Economic Partnership, the Los Angeles Chamber of Commerce, the Orange County Business Council," said Granillo.

"Our focus is making sure we're securing the necessary funding for our transportation system in Southern California."

Major Inland Empire transportation projects include the widening of the 91 Freeway, grade separation for rail lines at the Colton Crossing, extending the Gold Line east to the Inland Empire, as well as current planning for the potential widening and tolling of the 10 Freeway.

"A lot of things have happened because of the interaction that comes as a result of this conference," said Hasan Ikhrata, executive director of Southern California Associated Governments, or SCAG, which is the metropolitan planning authority for much of the Southland.

Tim Watkins, spokesman for the transportation agency San Bernardino Associated Governments, manned his agency's informational booth at the conference.

Consulting companies and area transportation agencies also hosted informational booths in a banquet hall of the hotel.

"I think one of the things that Mobility 21 does very successfully is really expand our voice as a region on issues primarily of transportation," Watkins said. "We all have similar challenges, whether it's Los Angeles County, Orange County, or San Bernardino

County, the transportation side, but when we come together as a group like this and using Mobility 21 as an advocacy effort to do that, our voice gets louder in Washington D.C. or in Sacramento, where we really need some of that legislative help to move some of these projects through the process."

Los Angeles Mayor Eric Garcetti was a speaker at the event, and shared his interest in making sure government and leaders within the region work cohesively instead of competitively. He highlighted the point by citing his interest in bringing local control back to OMT.

The airport is currently operated by the city of Los Angeles. In July, Garcetti said he was in favor of returning local control of OMT to Ontario as long as both sides could agree on the right price. He reiterated his view during his summit speech.

"We understand LAX is critical, but we're also looking creatively to our friends in the Inland Empire and the eastern part of (Los Angeles) County to see what we can do to transfer On-

tario to local ownership," Garcetti said.

Last year, Ontario sued Los Angeles in order to rescind the terms of the 1967 agreement giving control of OMT to the city of Los Angeles. Negotiations toward an agreed-upon sale price are ongoing.

Garcetti also strongly encouraged cooperation between all government entities within Southern California and stressed that everyone working together toward better transportation solutions is better than each agency focused on its own local interests.

"When we act together as a region, we win," he said.

Topics discussed during the conference included utilizing new technologies, the enhancement of transit systems, tolling, and mileage-based user fees.

"You have the heads of the transportation agencies, with the major business organizations of the region, having conversations about how we create a transportation and transit system that is going to best serve almost 23 million residents (in Southern California)," Granillo added.

ITEM # F1

DATE: October 1, 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 Key Performance Indicators (KPI) for the sbX through August 31, 2014, is attached. During the last week of August, Average Daily ridership on sbX was 2,132 riders. This is an increase of 61% since the first fare paying week of service. On average, average weekday ridership has increased by 3.2% per week since the first week of paid service.

Monthly August ridership on the sbX Corridor (sbX & Route 2) was 116,090. This is up 20% from corridor ridership for Route 2 alone for August 2013, which was 96,752.

A sbX PMOC (Project Management Oversight Consultant) meeting was held Tuesday, September 16. Many topics were discussed. Highlights of the discussions included: sbX ridership projected at 63,000 for September, Buy America issues regarding electrical meters and tire carousel, status of the transfer of properties from SANBAG to the City of San Bernardino, Financial Risk Register and close out of the E Street Corridor Project construction contract with Griffith/Comet Joint Venture.

The solicitation for the Pavement Rehabilitation Project on E Street from 10th to Highland was issued on September 4th and downloaded by 25 potential contractors. Four attended the non-mandatory pre-bid and job-walk on September 16. Bids are due October 14, 2014. The project will be presented to the Board of Directors for award once approval to use funding from the sbX E Street Corridor Project is received from the Federal Transit Administration.

A Partnering Session for the Vehicle Maintenance Facility (VMF) was held Thursday, September 18, 2014. The purpose of the session was to address the unacceptable schedule submitted by the contractor for the facility's completion date. Significant progress was achieved and it is estimated we can reduce the current schedule by 45-60 days.

Outreach events in August included: National Night Out in Rancho Cucamonga, Parkview Middle School OmniGo promotion in Yucaipa, Omni Night @ the 66ers in San Bernardino and the Rancho Cucamonga Quakes Game. And, for the first time, Omnitrans participated in the Veterans Transportation Fair in Loma Linda.

PSG:VD

sbX Key Performance Indicators (August FY2015)

Topic	Measure	Target	Actual	Status
Ridership	Average Daily Ridership (sbX)	5,607	1,855 2,132	YTD, FY2015 Week of 8/25/2014
	Average Daily Ridership (Corridor)	7,049	4,281 4,666	YTD, FY2015 Week of 8/25/2014
Productivity	Passengers per Hour	Green: 40; Yellow: 35; Red: 30	15.3 17.4	YTD, FY2015 August FY2015
Cost Efficiency	Farebox Recovery Ratio	Green: 30%; Yellow: 25%; Red: 20%	9.83%	YTD, FY2015
Reliability	Headway Adherence	90% of trips spaced ±3 minutes of scheduled headway	61%	YTD, FY2015
Runtime	Median One-Way Runtime	47 minutes	54.7	YTD, FY2015
Customer Satisfaction	Complaints per 100,000 boardings	<10 complaints per 100,000 boardings	34.0 (52 com./ 152,916 brds) 20.0 (16 com./ 79,775 brds)	Since Inception YTD, FY2015
	Compliments per 100,00 boardings	>1 compliments per 100,000 boardings	2 commendations / 152,916 boardings	Since Inception.
Safety	Preventable Accidents per 100,000 miles	<1 per 100,000 miles	0	Since Inception
Attendance	Driver Attendance	<6 absences per year per operator	0	Since Inception

ITEM # F2

DATE: October 1, 2014

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

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Wendy Williams, Director of Marketing and Planning

SUBJECT: VETERANS FARES & UNIFORMED PUBLIC SAFETY FARES

FORM MOTION

Adopt a new half-fare discount for Veterans and a new free fare for Uniformed Public Safety Officers and Active Duty Military effective January 5, 2015 as a modification to the fare policy previously adopted in the OmniConnects FY2015-2020 Short-Range Transit Plan in May 2014.

BACKGROUND

On August 6, 2014, Omnitrans' Board of Directors authorized staff to develop a fare policy proposal for Veterans and Public Safety/Active Military fares. The Board also authorized staff to hold a public hearing on the fare proposal, which was held on September 17, 2014.

This memorandum contains the four required components to evaluate the fare change proposal:

1. Proposed Fare Policy
2. Cost Analysis
3. Public Hearing Results
4. Title VI Analysis

The fare policy recommendation has been developed based on policy in place at peer agencies. Omnitrans would bear an expected annual cost of \$23,000 per year, mostly in foregone revenue from the program and a startup cost of \$8,500 for programing, graphics and new customer information.

If the Board adopts this fare policy change, Veterans Fares and Uniformed Public Safety/Active Duty Military fares will be implemented on January 5, 2015 to coincide with the next scheduled service change. Additionally, to promote this proposed change, Omnitrans plans to offer a free ride day for Veterans on Veterans Day 2014, which is November 11, 2014.

PROPOSED FARE POLICY

The proposed Veterans Fare Policy is:

Veterans Fare

Omnitrans offers a half-fare for US Veterans on Fixed Route Buses including Local, Express, sbX & OmniGo. Access ADA Service is excluded. Veterans are required to show a valid Veterans ID card while boarding to receive discounted fare.

Omnitrans accepts the following ID cards as proof of Veteran Status:

- *County of San Bernardino Military Veteran ID Card;*
- *US Department of Veterans Affairs (VA) ID Card;*
- *Department of Defense Retired ID Card; and,*
- *Other Transit Agency Veterans ID Cards.*

Omnitrans recommends the use of the County of San Bernardino Military Veteran ID Card as the primary identification to be used by Omnitrans. This card is available to qualified veterans free of charge and requires the same proof of qualification that Omnitrans was considering. The use of this card avoids duplication of services and helps Omnitrans partner with others in the County of San Bernardino's Veteran-Friendly Business program.

The proposed fare table for Fixed Route service is:

	Full-Fare	Youth	Senior Disability Medicare	Veteran
Cash/Ticket Fares	\$1.75	n/a	\$0.75	\$0.75
Day Passes (Single)	\$5.00	n/a	\$2.25	\$2.25
Day Passes (10-Pack)	\$45.00	n/a	\$20.00	\$20.00
7-Day Passes	\$18.00	\$14.00	\$8.00	\$8.00
31-Day Passes	\$55.00	\$41.00	\$27.50	\$27.50

The proposed Uniformed Police, Fire and Active Duty Military fare is:

Police, Fire and Active Duty Military Fare

Omnitrans offers a free fare on any Omnitrans fixed route bus service for uniformed active duty military, police or fire personnel. Access ADA Service is excluded.

- *Active duty military personnel must wear the appropriate uniform at the time of boarding and present a valid U.S. Uniformed Services ID card indicating active service or a Common Access card indicating uniformed services or active duty.*
- *Police and fire personnel must be in full Class A uniform at the time of boarding.*

COST ANALYSIS

The costs analysis below was provided in the August 6, 2014 Omnitrans Board of Directors Memorandum, at which time staff was authorized to develop a fare proposal. It is reproduced here with the removal of ID card processing, as the policy is now being considered for implementation. The primary cost of offering a discounted veterans fare is forgone revenue. There are some small additional costs associated with setting up a Veterans Fare. These costs and foregone revenue are estimated in Exhibit 1 as annual reoccurring costs and one-time setup costs.

The cost analysis is based on:

- 79,000 veterans living in our service area (5.8% of the population);
- 48% of these veterans already being qualified for a discounted fare which implies there are 41,000 local veterans that could financially benefit from this program and 38,000 veterans that already qualify for a discount through another program;
- Riverside Transit Agency's (RTA's) experience of offering 14,000 Veteran trips from January to June 2014; an average of 2,300 trips per month and 0.3% of RTA fixed route ridership; and,
- Measure I currently funds a \$0.05-\$0.10 per trip fare subsidy on Senior & Disabled trips that may not apply to Veteran trips.

Maximum annual costs are based on the Veterans share of population and the revenue in the category. Expected annual costs are based on RTA's experience scaled by the relative boardings at Omnitrans compared to RTA.

Exhibit 1: Projected Veterans Half-Fare Costs

Type (Description)	One-Time Costs	Maximum Annual Costs	Expected Annual Costs
Forgone Revenue (Currently using S/D, potential lost Measure I fare subsidy) ¹	--	\$34,000	\$2,000
Forgone Revenue (Currently using full fare passes) ²	--	\$256,000	\$20,000
Veterans Fare Media	--	\$1,000	\$1,000
Printing: Customer Information, Forms, Decals, etc.	\$5,000	--	--
GFI Programming: Bus pass encoding	\$1,000	--	--
GFI Programming: Ticket Vending Machines	\$2,500	--	--
Sub Total	\$8,500	\$291,000	\$23,000

¹ 16% of the Senior and Disabled population in Omnitrans service area are veterans. Omnitrans receives \$213,000 in Measure I Fare Subsidy. 16% of that may be forgone if a standalone Veteran category is created.

² Of the 1.4 million population in Omnitrans Service Area, approximately 925,000 would pay full-fare rather than youth or Senior/Disabled. Of these, 41,000 are veterans (4.5%).

The difference between maximum annual cost and expected annual costs is large. The primary difference between the two is the assumption that all veterans become quickly informed and immediately switch to the new veterans category. The other assumption is that the veteran ridership share of full fare trips is the same as the veteran share of the full-fare paying population. At RTA, only 0.3% of trips during the last six months have been on a veteran fare, while 8.9% of the population in the county are veterans.

Offering uniformed police officers, firefighters and active duty military with free travel on Omnitrans fixed route services is an effective way to improve customer satisfaction by improving perceived safety on board. While there are currently few, if any, uniformed officers that travel on Omnitrans today, the increase in services like sbX may persuade officers to travel. Ridership by a uniformed officer will pay for itself in terms of a passive security measure. The expected cost of public safety fares is minimal.

PUBLIC HEARING RESULTS

Omnitrans is required to hold a public hearing in order to gather public feedback on a major service change or any fare change. The Board of Directors authorized this public hearing on August 6, 2014.

The Notice of Public Hearing was advertised in the *San Bernardino Sun* on August 18, 2014 with the comment period ending on September 19, 2014. During September 2014, Omnitrans promoted the public hearing and gathered responses to the public hearing through a number of communication channels including: Omnitrans.Org; social media; e-newsletters; and in a presentation to the Public and Specialized Transportation Advisory and Coordination Council (PASTACC).

The formal public hearing was held on Wednesday September 17, 2014. One person attended; however, several people voiced their opinion through an online comment form, social media, letters and email. In total, 19 official comments were collected. Of these comments, 17 (89%) were in favor of Omnitrans adopting the proposed fare changes and 2 (11%) were opposed. There were 21 additional comments posted on Omnitrans blog and Facebook page, with a similar positive response. Omnitrans also polled drivers and received 37 responses, with 34 (92%) favorable responses.

All comments submitted are available upon request. The primary comment themes were:

- Veterans Fare is a good showing of appreciation for Veterans who often do not get the support and respect that they deserve.
- Veterans Fare helps reduce transportation issues as a key impediment to veterans receiving other services and/or seeking the help that they often need.
- Primary concern expressed related to the need for Active Duty Military, Police and Fire to be in uniform to receive free fare and the potential safety risk.

TITLE VI ANALYSIS

As a recipient of federal funds under the Federal Transit Administration's (FTA's) guidelines, Omnitrans is required to comply with Title VI of the Civil Rights Act of 1964. The FTA's current Title VI circular (FTA C 4702.1B) requires that a fare equity analysis be completed for any proposed change to ensure that the proposed change does not create a disparate treatment or disparate impact on low-income or minority populations.

Omnitrans is supportive of the veterans' community in the San Bernardino Valley and provides routes to key veteran destinations. Currently, Omnitrans does not offer a discounted fare to the active duty or retired members of our armed forces. Special veterans' fares are not currently a widespread discount, but the practice is gaining traction locally. Omnitrans believes that offering a veterans fare is fitting and justified as appreciation for the service that veterans have provided.

A Title VI determination does not address whether the agency has a right to offer a special fare, but whether the agency can do so in a fair and equitable manner that does not unfairly impact the minority or low income community. Even a benefit offered one group can impact others adversely if it incurs a significant cost which is transferred to low income or minority ridership.

An analysis made for the most recent Title VI triennial update found that 77.6% of residents within ½-mile of any Omnitrans route are considered Low-income or minority (LIM) which compares to 70.0% for San Bernardino County as a whole. The 77.6% LIM share for Omnitrans' service area becomes the baseline by which Omnitrans compares demographic equity.

The share of Veterans that are low-income or minority can be derived based on the American Community Survey (ACS) 2008 to 2012 5-year estimate. An evaluation was completed on Omnitrans service area and it was determined that 44.7% of veterans are low-income or minority. So the population of veterans drawn from our service area does not mirror that of the service area population as a whole. There are significantly fewer minority members per capita within the veteran population when compared to that of the proportion of minorities within Omnitrans' service area.

Looking at the veterans fare from a purely demographic perspective, the proposed Veterans' fare does favor a group that is not as minority- or low-income concentrated as the population as a whole. Thus it could be found that the fare reduction does favor the non-LIM community.

However, demographics are not the only criterion by which a proposed policy can be measured. Another is the necessity or overall good the policy brings about, and how much it will cost the agency as a whole, and whether or not these costs will unduly adversely impact the LIM population.

As has been shown, a cost does accrue to the agency as a result of the proposed fare change. The question is whether or not this cost is significant vis-à-vis the agency's annual budget, and whether or not that cost will be "passed along" to consumers in such a way that it unduly adversely impacts low income or minority ridership. It is estimated that the cost in terms of forgone revenue would be \$23,000 annually. As a result, the economic impact of favoring veterans with a reduced fare should be negligible to the agency as it accounts for only three-

hundredths of one percent of the annual operating budget. On balance, this is a cost which can be absorbed by the agency without negatively impacting the LIM community.

A proposed change to fare policy does not have to mirror or better the LIM proportion of an agency's service area *per se*, as long as there are compelling reasons for the proposed change, and as long as the change does not unduly adversely impact the LIM population. This is one of those situations: overall the expected fare reduction will not have an adverse impact on minority or low income populations in Omnitrans' Service Area.

CONCLUSION

Staff recommends that the Board of Directors adopt the proposed fare policy changes to the fare policy that was adopted in the OmniConnects 2015-2020 Short-Range Transit Plan. If adopted, staff will implement the change to fare policy at the next scheduled service change on January 5, 2015.

PSG:WW:JB

ITEM # F3

DATE: October 1, 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: RESOLUTION NO. 275-14 - DECLARING OMNITRANS PROPERTY SURPLUS AND AUTHORIZE THE SALE BY PUBLIC AUCTION

FORM MOTION

Adopt Resolution No. 275-14 declaring Omnitrans Property Surplus and authorize the sale by public auction.

BACKGROUND

Omnitrans Board of Directors authorized the Chief Executive Officer/General Manager to proceed with the disposition of the 28.8 acre property located in Rancho Cucamonga, California (Mid-Valley). Additionally, the Board of Directors approved a professional services agreement between Omnitrans and the San Bernardino County Real Estate Services Department (RESO) for disposition of the property.

Prior to the sale of the property at public auction, a resolution must be adopted by the Omnitrans Board of Directors declaring the property as surplus, and authorizing its sale. The RESO is in the process of advertising the property to governmental agencies. The property must be offered to governmental agencies for at least 60 days. If there is no interest in purchasing the property within that 60 day period, the next step would be to advertise the property for sale at auction for 45 days to the public.

The public auction is scheduled for January 8, 2015, at 10:00 a.m. in the Joshua Room, located on the first floor of the County Government Center.

PSG:DW

Attachments: Resolution No. 275-14
Notice of Exemption

RESOLUTION NO. 275-14

A RESOLUTION DECLARING OMNITRANS PROPERTY SURPLUS AND AUTHORIZE THE SALE BY PUBLIC AUCTION

WHEREAS, the below referenced property was acquired for public purposes and is no longer necessary to be retained for the uses and purposes of Omnitrans:

Approximately, 1,251,479 square feet, or 28.73 acres, zoned for general industrial use in Rancho Cucamonga, Assessor Parcel Number 0229-021-60-0000, consisting entirely of unpaved vacant land, with no site improvements other than a fence surrounding the mostly rectangular lot.

WHEREAS, the property is not in an area of statewide, regional or local concern as defined in Section 15206 (b)(4) of the California Environmental Quality Act (CEQA) Guidelines, the disposition of this land is exempt from further environmental review pursuant to Section 15312, and the Notice of Exemption was posted with the San Bernardino County Clerk of the Board on September 15, 2014.

NOW, THEREFORE BE IT RESOLVED by the Omnitrans Board of Directors hereby declares Omnitrans' intention to sell, exchange, or convey said parcels pursuant to Government Code Sections 25526, 25363 and 25365, and directs the County of San Bernardino Real Estate Services Department ("Consultant") to dispose of said parcel in accordance with the terms set forth below:

<u>PUBLIC AUCTION</u>	<u>MINIMUM BID</u>	<u>DEPOSIT WITH BIDS</u>
Sell 28.73 acres at public auction APNs: 0229-021-60-0000	\$21,300,000	\$2,130,000

MINIMUM ACCEPTABLE TERMS:

- 1) All bids will require a deposit in the form of a cashier's or certified check in the amount of \$2,130,000.
- 2) The successful bidder will be required to enter into a purchase and sale agreement provided by Omnitrans and its Consultant.
- 3) The Due Diligence period of 60 days to commence upon the approval and execution of the purchase and sale agreement by both parties.
- 4) The deposit of the successful bidder will become non-refundable upon the expiration of the due diligence period.

In accordance with California Government Code Section 25531, "Oral Bids", the following will apply:

"Before accepting any written proposal, the Omnitrans Board of Directors shall call for oral bids. If, upon the call for oral bidding, any responsible person offers to purchase the property ... upon the terms and conditions specified in the resolution for a price ... exceeding by at least 5 percent, the highest written proposal which is made by a responsible person, such highest oral bid shall be finally accepted."

All bids will require a deposit in the form of a cashier's or certified check. The purchase price is to be paid in cash. The auction shall take place at the County of San Bernardino Government Center, 385 N. Arrowhead Avenue, San Bernardino on **Thursday, January 8, 2015, at 10:00 a.m.**

Final acceptance of any bid will be subject to approval by the Omnitrans Board of Directors. The Board of Directors reserves the right to reject any and all bids and may withdraw the property from sale.

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Omnitrans Board of Directors, at their regular meeting held on the 1st day of October, 2014, by the following vote, to wit:

AYES:

NOES:

ABSENT:

Alan D. Wapner, Chair
Omnitrans Board of Directors

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

Approved as to form:

Carol Greene
Legal Counsel for Omnitrans

DATE FILED & POSTEDPosted On: 9/15/14Removed On: 10/27/14Receipt No: 446736CLERK OF THE
BOARD OF SUPERVISORS

Print Form

Notice of Exemption

2014 SEP 15 PM 4:13

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044From: (Public Agency): OMNITRANS
COUNTY OF SAN BERNARDINO
1700 W. Fifth Street
SAN BERNARDINO, CA 92411

County Clerk

County of: _____

(Address)

Project Title: Sale of Mid-Valley Land, Rancho Cucamonga, CAProject Applicant: OMNITRANS

Project Location - Specific:

12400 Arrow Route, Rancho Cucamonga, CA 91379

Project Location - City: Rancho CucamongaProject Location - County: San Bernardino

Description of Nature, Purpose and Beneficiaries of Project:

The Project is the sale of a vacant lot with an area of 1,251,479 square feet, or 28.73 acres, zoned for general industrial use in Rancho Cucamonga. The property consists entirely of unpaved vacant land, with no site improvements other than a fence surrounding the mostly rectangular lot.

Name of Public Agency Approving Project: OMNITRANSName of Person or Agency Carrying Out Project: OMNITRANS

Exempt Status: (check one):

- ☐ Ministerial (Sec. 21080(b)(1); 15268);
- ☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
- ☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- ☒ Categorical Exemption. State type and section number: Surplus Government Property Sale 15312
- ☐ Statutory Exemptions. State code number: _____

Reasons why project is exempt:

Section 15312, Class 12, Surplus Government Property Sales. The Project consists of the sale by OMNITRANS of a 1,251,479 square feet, or 28.73 acres zoned for general industrial use in Rancho Cucamonga. The property is not in an area of statewide, regional or local concern as defined in Section 15206 (b)(4) of the CEQA Guidelines.

Lead Agency

Contact Person: Jennifer GoodellArea Code/Telephone/Extension: (909) 677-0477

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? ☒ Yes ☐ No

Signature: [Signature]Date: 09/09/2014Title: Finance Director☐ Signed by Lead Agency ☒ Signed by ApplicantAuthority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: _____

Revised 2011

ITEM # F4

DATE: October 1, 2014

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

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Marjorie Ewing, Director of Human Resources, Safety & Regulatory Compliance

**SUBJECT: LIQUEFIED NATURAL GAS (LNG) STATION AT
SAN BERNARDINO FACILITY**

FORM MOTION

Authorize the CEO/General Manager to award Contract SAS14-241 to Kazarians & Associates of Glendale, CA, in the amount of \$49,590, plus a 10% contingency of \$4,959; for a total not-to-exceed amount of \$54,549, for the provision of an LNG Operations Risk Assessment on Existing Omnitrans Fueling Facilities,; and

Authorize the CEO/General Manager to award Contract FIN14-269 to Clean Energy of Seal Beach, CA, in the amount of \$30,200, plus a 10% contingency of \$3,020, for a total not-to-exceed amount of \$33,220; for the provision of a Compressed Natural Gas (CNG) Fueling Infrastructure Feasibility Study to evaluate switching from LNG to pipeline natural gas and removing existing LNG tanks, and

Authorize that no further action be taken on RFP-ADM14-268, Remote Fueling Study, as no responses to the solicitation were received.

This item was reviewed by the Operations & Safety Committee at the September 10, 2014 meeting, and recommended to the Board of Directors for approval.

BACKGROUND

In 1998, Omnitrans began CNG fueling operations at the San Bernardino facility. The CNG system generated community complaints regarding natural gas odors and safety concerns. In 2002, Omnitrans switched from pipeline CNG to using an extremely stable un-odorized liquefied natural gas (LNG). Design and construction of the new facility focused on community and employee safety; with an emphasis on redundant, and stringent, “safe guards” to ensure the highest possible safety posture. Also in 2002, community concerns were elevated to the State Legislature through State Senator Soto who introduced a Senate Bill 1927 to require an independent health study. The study was completed in 2004 and concluded that natural gas

fueling operations created no adverse health impacts to the community. In efforts to work with the community, Omnitrans' migration to a fully compliant alternative LNG fuel system allowed for the elimination of the odor nuisance caused by the CNG. Although no incidents of a safety breach in the LNG system were experienced, nor did subsequent air quality inspections reveal any findings, community members again raised concerns about the safety of Omnitrans fueling operations in early 2010; focusing on the risk LNG storage tanks present to the community.

At the February 5 and March 5, 2014 Board of Directors meetings, community members voiced their concerns regarding the safety of Omnitrans' LNG equipment at the San Bernardino facility during public comments. As directed by the Board Chair, the Operations and Safety Committee was tasked to review the matter and bring back a recommendation to the Board of Directors for consideration.

At the March 24, 2014 Operations and Safety Committee meeting, staff was instructed to solicit for a consultant to assess the Omnitrans LNG tanks at the San Bernardino facility, which would include evaluation of the safety of the station and tanks in the event of a major earthquake. At the April 9, 2014 Board of Directors meeting, the Board suggested that staff also consider the feasibility of relocating the LNG tanks. Subsequently, the CEO/General Manager directed that staff take this opportunity to solicit bids for a CNG fueling feasibility study to evaluate the latest technology in CNG equipment to determine if switching from LNG to pipeline natural gas was a viable option.

Three requests for proposals were developed and released through the Procurement Department. The chart below gives the summary of the solicitation timelines and procurement results. Despite four deadline extensions, Omnitrans received no proposals for the Remote Fueling Study. Reasons given by vendors for non-submittal are listed below the summary.

	RFP-FIN14-269 CNG Fueling Infrastructure Feasibility Study	RFP-SAS14-241 LNG Operations Risk Assessment	RFP-ADM14-268 Remote Fueling Study
Date Released	7/3/14	6/3/14	5/27/14
Pre-Proposal	N/A	6/10/14	6/3/14
Prospective Bidders	308 Notified; 33 Downloaded RFP	320 Notified; 38 Downloaded RFP	326 Notified; 24 Downloaded RFP
Q&A Closed	7/24/14	6/24/14	6/17/14
Addendum issued	1 7/10/14 Q&A 2 7/15/14 Q&A 3 7/21/14 ERROR 4 7/22/14 Q&A	1 6/10/14 2 6/23/14 (Date Extension) 3 7/03/14 (Date Extension) 4 7/14/14 Q&A 5 7/21/14 (Date Extension)	1 6/23/14 (Date Extension) 2 7/03/14 (Date Extension) 3 7/21/14 (Date Extension) 4 8/05/14 (Date Extension)
Proposals Received	2 proposals received Clean Energy - \$33,556 GNA - \$41,000	1 proposal received Kazarians & Associates - \$49,590	None Received
BAFO Issued	Clean Energy – 30,200 GNA – 40,000	N/A	N/A

Contacted Vendors for Outreach	28 vendors contacted by phone and e-mail	41 vendors contacted by phone and e-mail	40+ vendors contacted by phone and e-mail
Final Due Date	7/29/14	8/5/14	8/19/14
Reasons given for non-submittal: <ul style="list-style-type: none">• Firms don't have the required expertise• Out of state firms said, too much competition in the California Market, travel would make costs too high for small project• Dollar values were too low for the work requested• No interest from subs• Too busy to take on another project			

FUNDING SOURCE

The cost of Consultant(s) will be paid from the Administration Department's operating budget as follows:

Department	1300
Expenditure	503990

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

CONCLUSION

To address community concerns with Omnitrans LNG fueling system safety, the Board of Directors award of contract(s) for an LNG Operations Risk Assessment on existing Omnitrans fueling facilities; and/or hiring a consultant to conduct a CNG Fueling Infrastructure Feasibility Study to consider switching from LNG to pipeline natural gas.

PSG:ME



CONTRACT AGREEMENT

between

KAZARIANS & ASSOCIATES, INC.
221 East Glenoaks Blvd., Suite 101
Glendale, CA 91207
mkazarians@kazarians.com

(hereinafter "CONTRACTOR")
Telephone: 818-242-0401
Fax: 818-247-4975

And

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

CONTRACT DOCUMENTS

CONTRACT NO. SAS14-241

Liquified Natural Gas (LNG)
Operations Risk Assessment

Contract Amount: \$49,590

Omnitrans Project Manager:

Name: Marjorie Ewing
Title: Director of HR/Safety
Telephone: (909) 379-7261
Email: Marjorie.ewing@omnitrans.org

Contract Administrator:

Name: Joanne Cook
Title: Sr. Contracts Administrator
Telephone: (909) 379-7198
Email: joanne.cook@omnitrans.org



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ATTACHMENT A – SCOPE OF WORK

ATTACHMENT B - PRICING

This Agreement is made and entered into as of this Seventh day of October, 2014 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and KAZARIANS & 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 term of this Agreement shall be from the seventh day of October 2014 and continue in effect through January 30, 2015, 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 October 7, 2014 Through January 20, 2015, which period encompasses the Term of the 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 shown in Attachment B, and subject to the maximum cumulative payment obligation.

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Forty Nine Thousand, Five Hundred Ninety Dollars (\$49,590), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

4. INVOICING AND PAYMENT

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

CONTRACTOR shall submit invoices in duplicate to:

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

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

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

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

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

5. AUDIT AND INSPECTION OF RECORDS

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

6. NOTIFICATION

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

To OMNITRANS:

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

To CONTRACTOR:

Kazarians & Associates, Inc.
221 East Glenoacks Blvd., Suite 101
Glendale, CA 91207
Attn: Mardy Kazarians
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: Marjorie Ewing, Director of Human Resources/Safety & Security

- 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>Mardy Kazarians</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 on this RFQ shall have Hazardous Materials Endorsements on their Commercial Driver's License, and such other Endorsements as may be required by relevant laws and/or regulations.

Additional Insured:

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

15. INDEMNITY

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

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

16. REVISIONS IN SCOPE OF WORK

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

17. RIGHTS IN TECHNICAL DATA

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

18. OWNERSHIP OF REPORTS AND DOCUMENTS

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

19. OWNERSHIP RIGHTS

- A. In the event OMNITRANS rightfully obtains copies of Proprietary Data under the terms of the separate License Agreement and Escrow Agreement that govern rights in Documentation, Software and Intellectual Property created and/or developed by Contractor, its Third Party Software

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

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

20. WORK FOR HIRE

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

21. SUBMITTAL OF CLAIMS BY CONTRACTOR

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

pertinent circumstances of the event or occurrence giving rise to the claim and the indebtedness, obligation, injury, loss or damages allegedly incurred by CONTRACTOR.

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

22. EQUAL OPPORTUNITY

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

23. STANDARD OF PERFORMANCE

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

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

To ensure compliance with OMNITRANS' Ethics Policy, CONTRACTOR shall provide written notice to OMNITRANS disclosing the identity of any individual

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

25. DISQUALIFYING POLITICAL CONTRIBUTIONS

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

26. COMPLIANCE WITH LAW

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

27. COMPLIANCE WITH LOBBYING POLICIES

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

28. PUBLIC RECORDS ACT

- A. All records, documents, drawings, plans, specifications and other material relating to conduct of OMNITRANS' business, including materials submitted by CONTRACTOR in its proposal and during the course of performing the Work under this Agreement, shall become the exclusive property of OMNITRANS and may be deemed public records. Said materials may be subject to the provisions of the California Public Records

Act. OMNITRANS' use and disclosure of its records are governed by this Act.

- B. OMNITRANS will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act, including interpretations of the Act or the definitions of trade secret, confidential or proprietary. OMNITRANS will accept materials clearly and prominently labeled "TRADE SECRET" or "CONFIDENTIAL" or "PROPRIETARY" as determined by CONTRACTOR. OMNITRANS will endeavor to notify CONTRACTOR of any request of the disclosure of such materials. Under no circumstances, however, will OMNITRANS be liable or responsible for the disclosure of any labeled materials whether the disclosure is required by law or a court order or occurs through inadvertence, mistake or negligence on the part of OMNITRANS or its officers, employees and/or contractors.
- C. In the event of litigation concerning the disclosure of any material submitted by CONTRACTOR, OMNITRANS' sole involvement will be as a stake holder, retaining the material until otherwise ordered by a court. CONTRACTOR, at its sole expense and risk, shall be responsible for prosecuting or defending any action concerning the materials, and shall defend, indemnify and hold OMNITRANS harmless from all costs and expenses, including attorneys' fees, in connection with such action.

29. WAIVER/INVALIDITY

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

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

30. FORCE MAJEURE

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

31. CONFIDENTIALITY

CONTRACTOR agrees that for and during the entire term of this Agreement, any information, data, figures, records, findings and the like received or generated by CONTRACTOR in the performance of this Agreement, shall be considered and kept as the private and privileged records of OMNITRANS and will not be divulged to any person, firm, corporation, or other entity except on the direct prior

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

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

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

33. GOVERNING LAW

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

34. MODIFICATIONS TO AGREEMENT

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

35. LICENSING, PERMITS AND INSPECTION COSTS

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

36. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement SAS14-241, (2) Attachment A, Scope of Work, (3) Attachment B, Pricing (4) provisions of RFP-SAS14-241 and (5) CONTRACTOR's proposal dated July 22, 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

KAZARIANS & ASSOCIATES, INC.

P. SCOTT GRAHAM
CEO/General Manager

MARDY KAZARIANS
President

DATE

DATE

Federal Tax I.D. No.

ATTACHMENT A
SCOPE OF WORK
SAS14-241
LNG Operations Risk Assessment

Omnitrans requires consulting services to assess the probability of an explosive atmosphere and identification of potential ignition sources at the East Valley storage and fueling site. The consultant, through a quantitative analysis, will provide a detailed study of accident scenarios due to small releases of gas from the facility, and the probability/consequences of the explosion as compare to other types of fuels. The study will include whether a hazardous or non-hazardous area exists at the fueling site.

The consult will also review and assess the storage tanks and related operations to ensure compliance with safety and regulatory requirements. The consultant shall be responsible for completing the identified tasks, making recommendations and providing the identified deliverables.

Location:

East Valley
1700 West Fifth Street
San Bernardino, CA 92411

Task 1- Municipal Codes Review:

- Identify Applicable Codes
- Assess Compliance
- Develop Findings
- Propose Mitigation Plans & Alternatives for Findings

Task 2 - Earthquake Risk/Impact:

- Identify industry standards
 - Benchmark Comparable Facilities
 - Structural
- Assess Compliance with Standards
- Review seismic zone 4 and equate to Richter Scale (for magnitude)
- Propose Mitigation Plans & Alternatives for Findings

Task 3 - Risk Review:

- Define properties of natural gas, LNG/CNG
- Identify Risks & Associated Hazards
 - Flammability
 - Explosive probability
- Assess Physical/Structural Integrity of Underground Storage Tanks, Vault, and Dispensing System as it pertains to the unlikely event of a catastrophic explosion.
- Propose Mitigation Plans & Alternatives for Findings

Deliverables:

- Community /Stakeholder Involvement – facilitate initial meeting; preliminary findings and final report.
- Presentation to the Board of Directors to include enough hard copies for each member of the Board and members of the community with an electronic file sent to the CEO
- Written Final Report of Findings & Proposed Mitigation Plan(s)

ATTACHMENT B - PRICING
SAS14-241
LNG OPERATIONS RISK ASSESSMENT

LNG Operations Risk Assessment	\$49,590
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CONTRACT AGREEMENT

between

CLEAN ENERGY
4675 MacArthur Court, Suite 800
Newport Beach, CA 92660
dturbide@cleanenergyfuels.com

(hereinafter "CONTRACTOR")
Telephone: 310-365-9559

And

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

CONTRACT DOCUMENTS

CONTRACT NO. FIN14-269

CNG FUELING INFRASTRUCTURE FEASIBILITY STUDY

Contract Amount: \$30,200

Omnitrans Project Manager:

Name: Donald Walker
Title: Director of Finance
Telephone: (909) 379-7261
Email: donald.walker@omnitrans.org

Contract Administrator:

Name: Joanne Cook
Title: Sr. Contracts Administrator
Telephone: (909) 379-7198
Email: joanne.cook@omnitrans.org



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ATTACHMENT A – SCOPE OF WORK

ATTACHMENT B - PRICING

This Agreement is made and entered into as of this Seventh day of October, 2014 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and CLEAN ENERGY (hereinafter referred to as "CONTRACTOR").

RECITALS

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

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

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

1. SCOPE OF WORK

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

2. PERIOD OF PERFORMANCE

The term of this Agreement shall be from the seventh day of October 2014 Agreement and continue in effect through January 30, 2015, 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 October 7, 2014 Through January 30, 2015, which period encompasses the Term of the Agreement.

3. COMPENSATION

For CONTRACTOR's full and complete performance of its obligations under this Agreement, OMNITRANS shall pay CONTRACTOR on a LUMP SUM 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 Thirty Thousand, Two Hundred Dollars(\$30,200), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

4. INVOICING AND PAYMENT

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

CONTRACTOR shall submit invoices in duplicate to:

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

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

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

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

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

5. AUDIT AND INSPECTION OF RECORDS

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

6. NOTIFICATION

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

To OMNITRANS:

Omnitrans
1700 West Fifth Street
San Bernardino, CA 92411
Attn: Joanne Cook
Sr. Contracts Administrator

To CONTRACTOR:

Clean Energy
4675 MacArthur Court, Suite 800
Newport Beach, CA 92660
Attn: Peter Grace
Senior Vice President,
Sales & Finance

7. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES

A. OMNITRANS' Project Manager

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

Project Manager: Donald Walker, Director of Finance

- 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>Peter Grace</u>	<u>Senior Vice President, Sales & Finance</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 on this RFQ shall have Hazardous Materials Endorsements on their Commercial Driver's License, and such other Endorsements as may be required by relevant laws and/or regulations.

Additional Insured:

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

15. INDEMNITY

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

16. REVISIONS IN SCOPE OF WORK

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

17. RIGHTS IN TECHNICAL DATA

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

18. OWNERSHIP OF REPORTS AND DOCUMENTS

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

19. OWNERSHIP RIGHTS

- A. In the event OMNITRANS rightfully obtains copies of Proprietary Data under the terms of the separate License Agreement and Escrow Agreement that govern rights in Documentation, Software and Intellectual Property created and/or developed by Contractor, its Third Party Software Contractors and its Suppliers as part of the Project, any derivative works and associated documentation created by or on behalf of OMNITRANS by Permitted Programmers (as defined in the License Agreement) shall be the sole and exclusive property of OMNITRANS (collectively, "OMNITRANS Intellectual Property"), and OMNITRANS may use, disclose and exercise dominion and full rights of ownership, in any manner in OMNITRANS Intellectual Property in connection with the use, operation and maintenance of a transportation system administered by OMNITRANS. No use of OMNITRANS Intellectual Property shall be made for any purpose other than in conjunction with a transportation

system administered by CONTRACTOR, and OMNITRANS shall not sell, lease, rent, give away or otherwise disclose any OMNITRANS Intellectual Property to any outside third party other than Permitted Programmers. To the extent there may be any question of rights of ownership or use in any OMNITRANS Intellectual Property, Contractor shall require all of its subcontractors and suppliers (including without limitation its Third Party Software Contractors) to assign to OMNITRANS, all worldwide right, title and interest in and to all OMNITRANS Intellectual Property in a manner consistent with the foregoing terms of this paragraph. Contractor shall execute any documents as OMNITRANS may from time to time reasonably request to effectuate the terms of this paragraph.

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

20. WORK FOR HIRE

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

21. SUBMITTAL OF CLAIMS BY CONTRACTOR

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

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

22. EQUAL OPPORTUNITY

CONTRACTOR shall not discriminate against, or grant preferential treatment to, any individual or group, or any employee or applicant for employment because of

race, age, religion, color, ethnicity, sex, national origin, ancestry, physical disability, mental disability, political affiliation, sexual orientation, marital status or other status protected by law. CONTRACTOR shall take action to ensure that applicants and employees are treated without regard to the above.

23. STANDARD OF PERFORMANCE

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

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

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

25. DISQUALIFYING POLITICAL CONTRIBUTIONS

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

26. COMPLIANCE WITH LAW

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

27. COMPLIANCE WITH LOBBYING POLICIES

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

28. PUBLIC RECORDS ACT

- A. All records, documents, drawings, plans, specifications and other material relating to conduct of OMNITRANS' business, including materials submitted by CONTRACTOR in its proposal and during the course of performing the Work under this Agreement, shall become the exclusive property of OMNITRANS and may be deemed public records. Said materials may be subject to the provisions of the California Public Records Act. OMNITRANS' use and disclosure of its records are governed by this Act.
- B. OMNITRANS will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act, including interpretations of the Act or the definitions of trade secret, confidential or proprietary. OMNITRANS will accept materials clearly and prominently labeled "TRADE SECRET" or "CONFIDENTIAL" or

"PROPRIETARY" as determined by CONTRACTOR. OMNITRANS will endeavor to notify CONTRACTOR of any request of the disclosure of such materials. Under no circumstances, however, will OMNITRANS be liable or responsible for the disclosure of any labeled materials whether the disclosure is required by law or a court order or occurs through inadvertence, mistake or negligence on the part of OMNITRANS or its officers, employees and/or contractors.

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

29. WAIVER/INVALIDITY

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

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

30. FORCE MAJEURE

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

31. CONFIDENTIALITY

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

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

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

33. GOVERNING LAW

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

34. MODIFICATIONS TO AGREEMENT

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

35. LICENSING, PERMITS AND INSPECTION COSTS

- A. The FIRM warrants that it has all necessary licenses and permits required by the laws of the United States, State of California, and the County of San Bernardino, the Local Jurisdictions, and all other appropriate governmental agencies, and agrees to maintain these licenses and permits in effect for the duration of the Agreement. Further, FIRM warrants that its employees, agents, and contractors and subcontractors shall conduct themselves in compliance with such laws and licensure

requirements including, without limitation, compliance with laws applicable to nondiscrimination, sexual harassment and ethical behavior throughout the duration of this Agreement. FIRM further warrants that it shall not retain or employ an unlicensed subcontractor to perform work on this Project. FIRM shall notify OMNITRANS immediately and in writing of its employees', agents', contractors' or subcontractors' inability to obtain or maintain, irrespective of the pendency of any appeal, any such licenses, permits, approvals, certificates, waivers, exemptions. Such inability shall be cause for termination of this Agreement.

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

36. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement FIN14-269, (2) Attachment A, Scope of Work, (3) Attachment B, Pricing (4) provisions of RFP-FIN14-269 and (5) CONTRACTOR's proposal dated July 29, 2014.

37. ENTIRE AGREEMENT

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

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

OMNITRANS

CLEAN ENERGY

P. SCOTT GRAHAM
CEO/General Manager

PETER GRACE
Senior Vice President, Sales & Finance

DATE

DATE

Federal Tax I.D. No.

1. SCOPE OF WORK

Contractor shall conduct a feasibility study to evaluate and analyze the potential of constructing, owning and operating CNG Fueling Station at each fixed route facility.

The objectives are:

- Reducing fuel cost, and operational uncertainty in the event of dramatic fuel price increases in the open market
- Maintaining an adequate supply of CNG fuel from local sources to meet current and future requirements
- Maintaining Omnitrans' transit assets in a state of good repair, and improving the environment through continued investment in clean energy sources

The study must be conducted with an objective, unbiased approach to provide information upon which a decision can be based. The study will require performing a rational analysis of two basic criteria to judge feasibility, primarily the cost required and the value to be attained.

2. DELIVERABLES

The following is a summary of tasks necessary for the feasibility study that must be delivered to Omnitrans in a detailed report consisting of 25 to 30 pages and uploaded to the bidding system (including charts, graphs, etc.):

- a. Legal feasibility - determine whether the fueling station conflicts with legal requirements, e.g. jurisdictional restrictions.
- b. Operational feasibility – determine the impact of the fueling station on operational cost.
- c. Economic feasibility - determine the positive economic benefits to the organization that the proposed fueling station will provide. It includes quantification and identification of all the benefits expected. This will include a cost/benefits analysis.
- d. Technical feasibility - determine the present technical resources of the Omnitrans and the applicability to the expected needs of the fueling station. This requires an evaluation of the hardware and software and its compatibility with the requirements of a fueling station.
- e. Schedule feasibility - estimate the time necessary to complete construction of a fueling station that meets or exceeds the fuel requirements of Omnitrans.
- f. Market and real estate feasibility - evaluate Omnitrans' parcels for the best location for a fueling station.

- g. Resource feasibility – evaluate the local utility’s supply of natural gas and Omnitrans’ requirements for bus fueling. Also whether construction of the fueling station will interfere with current day-to-day operations.
- h. Financial feasibility – evaluate the fueling station financial viability on the total estimated cost of the fueling station, including existing land and/or equipment, and details of land and/or equipment to be purchased

ATTACHMENT B - PRICING
FIN14-269
CNG FUELING INFRASTRUCTURE FEASIBILITY STUDY

Feasibility Study (all costs included)	\$33,200
---	-----------------

ITEM # F5

DATE: October 1, 2014

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

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer Sims, Director of Procurement

**SUBJECT: AUTHORIZE AWARD – CONTRACT MNT15-05, AXLE HOUSINGS AND
RADIUS ROD BRACKETS**

FORM MOTION

Authorize the CEO/General Manager to award Contract MNT15-05 to New Flyer Industries Canada ULC of Winnipeg, Canada, for the provision of three axle housings and radius rod brackets (units) and the option to purchase up to an additional fourteen (14) units ending no later than October 14, 2019, in the amount of \$33,413.88 for the initial three units, and \$171,524.64 for the fourteen additional units purchased thereafter, for a total amount of \$204,938.52, including sales tax and delivery.

BACKGROUND

On August 6, 2014, Omnitrans' Board of Directors authorized release of Invitation for Bids IFB-MNT15-05. Notices were published in two local newspapers of general circulation and posted on Omnitrans' online bidding system.

The solicitation closed on September 9, 2014, with only one responsive and responsible bidder. Staff conducted outreach to other potential bidders and determined that no other equivalent products were available. Staff obtained a letter from the manufacturer of the units, MAN Truck and Bus, AG, (MAN) confirming that the only authorized Distributor/Dealer of MAN axle housings and radius rod brackets used on the 2005 New Flyer SR842 is New Flyer Industries Canada ULC.

Price is deemed fair and reasonable as the bid is within ten percent of the Independent Cost Estimate of \$186,470.14.

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 Source and Availability of Funds.
(Verified and initialed by Finance)

CONCLUSION

Award of this contract will allow for the necessary equipment to continue to repair and operate Omnitrans' fleet.

PSG:JMS:AA



CONTRACT AGREEMENT

between

CONTRACTOR

New Flyer Industries Canada ULC
#76-630 Kernaghan Avenue
Winnipeg, MB
R2C5G1

(hereinafter "CONTRACTOR")
Telephone: 800-665-2637
Fax: 800-745-5368

And

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

CONTRACT DOCUMENTS

CONTRACT NO. MNT15-05

**AXLE HOUSING AND RADIUS ROD
BRACKETS**

Contract Amount: not to exceed
\$204,938.52

Omnitrans Project Manager:

Name: Frank Flores
Title: Warranty Coordinator
Telephone: (909) 379-7204
Fax: (909) 379-7107
Email: frank.flores@omnitrans.org

Contract Administrator:

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



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ATTACHMENT A- PARTS AND PRICE LIST

ATTACHMENT B- REGULATORY REQUIREMENTS

This Agreement is made and entered into as of this 15th day of October, 2014 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and New Flyer Industries Canada, ULC (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, Parts and Price List" (hereinafter referred to as "Work");

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

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

1. SCOPE OF WORK

- A. CONTRACTOR will perform the Work and related tasks as described in Attachment A, Parts List hereto and is incorporated by reference into and made a part of this Agreement.
- B. 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 October 14, 2019, 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 October 15, 2014 Through October 14, 2019, which period encompasses the Initial Term.

3. COMPENSATION

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

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Two Hundred Four Thousand Nine Hundred Thirty Eight Dollars and 52/100 Dollars (\$ 204,938.52), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

4. INVOICING AND PAYMENT

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

CONTRACTOR shall submit invoices in duplicate to:

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

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

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

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

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

5. AUDIT AND INSPECTION OF RECORDS

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

6. NOTIFICATION

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

To OMNITRANS:

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

To CONTRACTOR:

New Flyer Industries Canada ULC
#76-630 Kernaghan Avenue
Winnipeg, MB R2C5G1
Attn: Phyllis Tapley, Director

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

- 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>
Phyllis Tapley	Director, Aftermarket Supply Chain and Distribution
_____	_____
_____	_____
_____	_____

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

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

8. DISPUTE RESOLUTION

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

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

- D. Pending final resolution of a dispute under this section, proposer shall proceed diligently with performance in accordance with the Contract and Omnitrans' CEO/General Manager's recommended decision.

9. TERMINATION FOR CONVENIENCE

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

10. TERMINATION FOR BREACH OF AGREEMENT

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

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

11. ASSIGNMENT

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

12. SUBCONTRACTING

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

Subcontractor's Name and Address	Work to Be Performed
n/a	
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>

13. INDEPENDENT CONTRACTOR

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

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

14. INSURANCE

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

- A. **Commercial General Liability including Products/Completed Operations:** \$1,000,000 per occurrence for bodily and property damage liability and \$2,000,000 aggregate; *Endorsement naming Omnitrans as Additional Insured.*
- B. **Automobile Liability:** \$1,000,000 combined single limit bodily and property damage liability per accident; *Endorsement naming Omnitrans as Additional Insured.*
- C. **Workers' Compensation:** statutory limits or, a State-Approved program in an amount and form that meets all applicable requirements of the Labor Code of the State of California; *waiver of subrogation that includes Omnitrans.*

Additional Insured:

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

15. INDEMNITY

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

16. REVISIONS IN SCOPE OF WORK

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

Upon execution of an amendment, CONTRACTOR shall perform the Work, as amended.

17. RIGHTS IN TECHNICAL DATA

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

18. OWNERSHIP OF REPORTS AND DOCUMENTS

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

19. OWNERSHIP RIGHTS

- A. In the event OMNITRANS rightfully obtains copies of Proprietary Data under the terms of the separate License Agreement and Escrow Agreement that govern rights in Documentation, Software and Intellectual Property created and/or developed by Contractor, its Third Party Software Contractors and its Suppliers as part of the Project, any derivative works and associated documentation created by or on behalf of OMNITRANS by Permitted Programmers (as defined in the License Agreement) shall be the sole and exclusive property of OMNITRANS (collectively, "OMNITRANS Intellectual Property"), and OMNITRANS may use, disclose and exercise dominion and full rights of ownership, in any manner in OMNITRANS Intellectual Property in connection with the use, operation

and maintenance of a transportation system administered by OMNITRANS. No use of OMNITRANS Intellectual Property shall be made for any purpose other than in conjunction with a transportation system administered by CONTRACTOR, and OMNITRANS shall not sell, lease, rent, give away or otherwise disclose any OMNITRANS Intellectual Property to any outside third party other than Permitted Programmers. To the extent there may be any question of rights of ownership or use in any OMNITRANS Intellectual Property, Contractor shall require all of its subcontractors and suppliers (including without limitation its Third Party Software Contractors) to assign to OMNITRANS, all worldwide right, title and interest in and to all OMNITRANS Intellectual Property in a manner consistent with the foregoing terms of this paragraph. Contractor shall execute any documents as OMNITRANS may from time to time reasonably request to effectuate the terms of this paragraph.

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

20. WORK FOR HIRE

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

21. SUBMITTAL OF CLAIMS BY CONTRACTOR

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

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

22. EQUAL OPPORTUNITY

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

23. STANDARD OF PERFORMANCE

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

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

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

25. DISQUALIFYING POLITICAL CONTRIBUTIONS

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

26. COMPLIANCE WITH LAW

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

27. COMPLIANCE WITH LOBBYING POLICIES

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

28. PUBLIC RECORDS ACT

- A. All records, documents, drawings, plans, specifications and other material relating to conduct of OMNITRANS' business, including materials submitted by CONTRACTOR in its proposal and during the course of performing the Work under this Agreement, shall become the exclusive property of OMNITRANS and may be deemed public records. Said materials may be subject to the provisions of the California Public Records Act. OMNITRANS' use and disclosure of its records are governed by this Act.
- B. OMNITRANS will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act, including interpretations of the Act or the definitions of trade secret, confidential or proprietary. OMNITRANS will accept materials clearly and prominently labeled "TRADE SECRET" or "CONFIDENTIAL" or

"PROPRIETARY" as determined by CONTRACTOR. OMNITRANS will endeavor to notify CONTRACTOR of any request of the disclosure of such materials. Under no circumstances, however, will OMNITRANS be liable or responsible for the disclosure of any labeled materials whether the disclosure is required by law or a court order or occurs through inadvertence, mistake or negligence on the part of OMNITRANS or its officers, employees and/or contractors.

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

29. WAIVER/INVALIDITY

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

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

30. FORCE MAJEURE

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

31. CONFIDENTIALITY

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

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

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

33. GOVERNING LAW

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

34. MODIFICATIONS TO AGREEMENT

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

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, Parts and Price List, (3) Attachment B, Regulatory Requirements, (4) provisions of IFB-MNT15-05 and (5) CONTRACTOR's proposal dated September 9, 2014.

37. ENTIRE AGREEMENT

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

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

OMNITRANS

NEW FLYER INDUSTRIES
CANADA ULC

P. SCOTT GRAHAM
CEO/General Manager

PHYLLIS TAPLEY
DIRECTOR

DATE

Federal Tax I.D. No. 980647911

MNT15-05

Axle Housing and Radius Rod Brackets

Parts and Price List

Stock Number	Description	Quantity	Total
218896	Axel Housings	3	\$29,956.92
219129	Radius Rod Brackets	3	\$910.41
218896	Axel Housing	1	\$10,984.21
219129	Radius Rod Bracket	1	\$333.81

ITEM # F6

DATE: October 1, 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 MNT15-57, THIRTEEN AMERICANS WITH DISABILITIES ACT CERTIFIED PARATRANSIT VEHICLES

FORM MOTION

Authorize the CEO/General Manager to award a contract MNT15-57 to Creative Bus Sales (CBS) of Chino, CA, for the provision of thirteen (13) Americans with Disabilities Act (ADA) certified paratransit vehicles in an amount not to exceed of \$1,133,244.

BACKGROUND

On January 15, 2014, the Federal Transit Administration (FTA) determined that its grantees in the State of California may continue to use contracts issued by the CalACT/MBTA Purchasing Cooperative. Staff followed the procedures using the CalACT Local Government Purchasing Schedule.

Omnitrans received the letter of assignment from CalACT/Morongo Basin Transit Authority (MBTA) to participate in the state's competitively bid contract for ADA-certified Paratransit Vehicles to purchase thirteen (13) Compressed Natural Gas (CNG) paratransit vehicles. These vehicles will replace paratransit vehicles which have exceeded their useful life mileage of 200,000 miles.

Using the CalACT/MBTA schedule of values, CBS is the lowest priced vendors included in the CalACT/MBTA Purchasing Cooperative program for the Class B Starcraft Allstar CNG cutaway paratransit vehicles. The Allstar is the same model as the majority of Omnitrans' paratransit fleet.

FUNDING SOURCES

FUNDING	GRANT #	YEAR	PROJECT NAME	INTERNAL ORDER	AMOUNT
FTA	CA-90-4850	2011	Access Vehicles	A1120401F	\$160,048
FTA	CA-90-Y939	2012	Access Vehicles	A1220401F	\$746,547
STA	11-03-OMN-B	2011	Access Vehicles	A1120401S	\$40,012
STA	13-10-OMN-B	2012	Access Vehicles	A0720401S	\$186,637
TOTAL					\$1,133,244

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

CONCLUSION

Approving the award of this contract will enable the replacement of high mileage ADA certified paratransit vehicles with new CNG vehicles.

SG:JS:JC

ITEM # F7

DATE: October 1, 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 OPS15-55
TRANSIT OPERATIONS SERVICES DURING WORK STOPPAGE**

FORM MOTION

Authorize the CEO/General Manager to award Contract OPS15-55 to National Tour Integrated Resources (NT), of Rancho Santa Margarita, CA, for the provision of as-needed Transit Operations Services during a Work Stoppage in an amount not to exceed \$1,500,000, beginning October 6, 2014 through October 5, 2019.

BACKGROUND

Omnitrans' negotiations to finalize an employment agreement with the Amalgamated Transit Union, Local No. 1704, has reached impasse. In order to avoid a possible full shutdown of service, an agreement is needed with an outside contractor to provide Transit Operations Service during work stoppage.

In accordance with Procurement Policy 2010, Emergency & Non-Competitive Procurements, Section 1.3.3 (The continuation of necessary Omnitrans functions), the CEO/General Manager received approval from the Chairman of the Board to release Request for Proposals RFP-OPS15-55 for the provision of transit operations services during work stoppage without obtaining approval for release from the full Board.

On September 11, 2014, staff released Request for Proposals RFP-OPS15-55. Notices were published in two local newspapers of general circulation and posted on Omnitrans' online bidding system. Although fifteen prospective bidders downloaded the specifications, only one proposal was received. In accordance with Federal Transportation Administration (FTA) Circular 4220.1F, staff surveyed potential bidders that chose not to submit a bid. As a result of the survey, staff determined the limited number of responses was unrelated to any terms or specifications of the solicitation. Cancelling and reissuing the solicitation will not result in additional proposals.

With over 3,500 DOT certified operators, NT has the capacity to meet whatever service level is required within a six (6) hour notice. Their Rapid Response Team reported “flawless execution in 7 work stoppages and kept transit at preferred levels of service,” including “15 cities in various stages of pre-deployment, work slowdowns, sickouts, and walkouts.” They have over 30 years’ experience serving transit agencies with zero accidents.

The agreement with NT will provide maximum flexibility to Omnitrans to allow deployment of contracted service any time work stoppage occurs over the next five years. Further, the scope of work provides a mechanism to elevate service levels as needed should work stoppage continue beyond just a few days.

The weekly service levels range from level 7 (90 operators) to level 1 (354 operators). NT’s pricing is constant throughout the five years and levels, fixed at \$53.55 per operator and \$130.50 per supervisor (fully burdened). The Independent Cost Estimate (ICE) for one week of coverage at service level seven (7) is \$302,501 per week compared to NT’s proposal of \$203,224. A cost analysis between the proposed pricing, the ICE, and fully burdened wages indicates that the proposed rates are fair and reasonable.

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

FUNDING SOURCE

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

Department	1100
Expenditure Code	503990

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

CONCLUSION

Award of this contract will provide a contingency plan to minimize loss of service due to a work stoppage.

PSG:JMS:JC



CONTRACT AGREEMENT

between

NATIONAL TOUR INTEGRATED
RESOURCES, INC.
22431 Antonio Parkway B160
Rancho Santa Margarita, CA 92688
Johnny.capels@nationaltourinc.com

(hereinafter "CONTRACTOR")
Telephone: 909-361-6295

And

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

CONTRACT DOCUMENTS

CONTRACT NO. OPS15-55

TRANSIT OPERATIONS SERVICES **DURING WORK STOPPAGE**

Omnitrans Project Manager:

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

Contract Administrator:

Name: Joanne Cook
Title: Sr. Contracts Administrator
Telephone: (909) 379-7198
Email: joanne.cook@omnitrans.org



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ATTACHMENT A - SCOPE OF WORK

ATTACHMENT B - N/A

ATTACHMENT C - PRICING

This Agreement is made and entered into as of this sixth day of October, 2014 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and National Tour Integrated Resources (hereinafter referred to as "CONTRACTOR").

RECITALS

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

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

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

1. SCOPE OF WORK

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

2. PERIOD OF PERFORMANCE

The term of this Agreement shall be from October 6, 2014 and continue in effect through October 5, 2019, 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 October 6, 2014 Through October 5 2019, which period encompasses the Full Term of the 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 shown in Attachment B, and subject to the maximum cumulative payment obligation.

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed the prices per Attachment C including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

4. INVOICING AND PAYMENT

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

CONTRACTOR shall submit invoices in duplicate to:

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

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

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

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

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

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

5. AUDIT AND INSPECTION OF RECORDS

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

6. NOTIFICATION

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

To OMNITRANS:

Omnitrans
1700 West Fifth Street
San Bernardino, CA 92411
Attn: Joanne Cook
Sr. Contracts Administrator

To CONTRACTOR:

National Tour Integrated Resources
22431 Antonio Parkway
Rancho Santa Margarita, CA 92688
Attn: Johnny Capels
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: Diane Caldera, Director of Operations

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

officers, employees, and/or agents that exceed the delegation of authority specified herein.

- b. The Contracting Officer has delegated to the Project Manager certain powers and duties in connection with this Agreement. The Project Manager is the authorized representative of the Contracting Officer for matters related to this Agreement. The Project Manager or his/her designee is empowered to:
 - 1. Have general oversight of the Work and this Agreement, including the power to enforce compliance with this Agreement.
 - 2. Reserve the right to remove any portion of the Work from CONTRACTOR which have not been performed to OMNITRANS' satisfaction.
 - 3. Subject to the review and acceptance by OMNITRANS, negotiate with CONTRACTOR all adjustments pertaining to this Agreement for revision.
- c. In addition to the foregoing, the Project Manager shall have those rights and powers expressly set forth in other sections of this Agreement.

B. Contractor's Key Personnel

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

<u>Name</u>	<u>Role</u>
<u>Johnny Capels</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 on this RFQ shall have Hazardous Materials Endorsements on their Commercial Driver's License, and such other Endorsements as may be required by relevant laws and/or regulations.

Additional Insured:

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

15. INDEMNITY

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

16. REVISIONS IN SCOPE OF WORK

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

17. RIGHTS IN TECHNICAL DATA

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

of OMNITRANS. The provisions of this paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.

18. OWNERSHIP OF REPORTS AND DOCUMENTS

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

19. OWNERSHIP RIGHTS

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

20. WORK FOR HIRE

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

21. SUBMITTAL OF CLAIMS BY CONTRACTOR

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

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

22. EQUAL OPPORTUNITY

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

23. STANDARD OF PERFORMANCE

- A. CONTRACTOR shall perform and exercise, and require its subcontractors to perform and exercise due professional care and competence in the performance of the Work in accordance with the requirements of this Agreement. CONTRACTOR shall be responsible for the professional quality, technical accuracy, completeness and coordination of the Work, it being understood that OMNITRANS will be relying upon such professional quality, accuracy, completeness and coordination in utilizing the Work. The foregoing obligations and standards shall constitute the “Standard of Performance” for purposes of this Agreement. The provisions of this paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.

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

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

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

25. DISQUALIFYING POLITICAL CONTRIBUTIONS

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

26. COMPLIANCE WITH LAW

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

27. COMPLIANCE WITH LOBBYING POLICIES

- A. CONTRACTOR agrees that if it is a Lobbyist Employer or if it has retained a Lobbying Firm or Lobbyist, as such terms are defined by OMNITRANS

in its Ethics Policy, it shall comply or ensure that its Lobbying Firm and Lobbyist complies with OMNITRANS' Ethics Policy.

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

28. PUBLIC RECORDS ACT

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

29. WAIVER/INVALIDITY

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

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

30. FORCE MAJEURE

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

31. CONFIDENTIALITY

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

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

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

33. GOVERNING LAW

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

34. MODIFICATIONS TO AGREEMENT

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

35. LICENSING, PERMITS AND INSPECTION COSTS

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

36. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, (2) Attachment A, Scope of Work, (3) provisions of RFP-OPS15-55 and (4) CONTRACTOR's proposal dated 2T.

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

NATIONAL TOUR INTEGRATED
RESOURCES, INC.

P. SCOTT GRAHAM
CEO/General Manager

JOHNNY CAPELS
President

DATE

Federal Tax I.D. No.

DM_____

ATTACHMENT A
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SCOPE OF WORK

I. Background

- A. Fixed routes are operated primarily with 40-foot buses, running along major east-west and north-south corridors. Omnitrans' bus models include New Flyer and Thomas 40-foot CNG vehicles.
- B. The sbX BRT, known as the Green Line, is a 15.7-mile BRT corridor between northern San Bernardino and Loma Linda, primarily following Omnitrans' existing Route 2. This service will be operated by Omnitrans staff and is not part of this scope of work.

II. Adjustment to Service

- A. The area to be served will be designated by Omnitrans at the time service is needed. Omnitrans' total service area currently encompasses fifteen cities and portions of the unincorporated areas within San Bernardino County.
- B. Modifications to services may include but are not limited to extending, deleting or adding routes or parts of routes, and expanding or decreasing scheduled revenue hours or frequency of service.

III. Service Hours

- A. Regular fixed route service hours vary by route and may range from approximately 3:30 a.m. to 11:30 p.m. Monday-Sunday. Details by route can be found at www.omnitrans.org.
- B. Contractor shall be capable of providing service during all established hours. Hours and days of operation are subject to change.
- C. Contractor shall provide service in a safe, courteous, reliable manner and in accordance with route and trip schedules provided by Omnitrans.

IV. Saturday, Sunday, and Holiday Schedule

Omnitrans reserves the right to operate modified service as deemed appropriate in conjunction with weekend and holiday schedules with one (1) week notice to Contractor. Weekend and holiday Service Schedule can be found at www.omnitrans.org.

V. Definitions

Span of Service: Determined by level of service needed. See attachments for levels 1-7.

Frequency of Service: Determined by level of service needed. See attachments for levels 1-7.

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Preventable Accident: a *preventable accident* is determined by the Omnitrans Operations Services Supervisor using the National Safety Council's definition: "A collision in which the vehicle operator failed to do everything reasonable to avoid it."

Revenue Hours: the departure time of the first stop of the route at the start of the day until the arrival time at the last stop of the route at the end of the day for route assigned to Contractor.

ODR: the Operator's Daily Report that each operator is required to record the mechanical condition of the bus.

MDT: each sbX coach is equipped with a Mobile Data Terminal to facilitate communications between the operator and dispatch or field supervision.

OBVSS: each coach is equipped with an On Board Video Surveillance System which captures the events that occur onboard and around the coach. This tool will be used to investigate accidents, incident and complaints as well as to perform random service quality checks and operator performance checks.

EOL: End Of Line of a bus route.

Trip: one full length from the route start to the designated EOL, one-way.

Pass-Up: when the operator drives by a designated bus stop which has waiting passengers and the operator fails to stop for those passengers.

TVM: Ticket Vending Machine.

Pull-Out: when the coach leaves the yard to deadhead to the route's first stop assignment.

VI. Operating Facility

The Contractor will be responsible for procuring coach operators, lodging, and transportation to and from the OMNITRANS East Valley bus yard on Medical Center Drive, San Bernardino and West Valley bus yard on Arrow Highway, Montclair.

VII. Reporting

A. Accident/Incident Reports

1. Operators are to notify dispatch immediately of any accident/incident which occurs on the service.
2. All accidents/incidents reports are to be turned into Omnitrans Dispatch by the close of business (COB) on the following day. Failure to provide report by COB

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the following day will result in a penalty of one hundred dollars (\$100.00) per day per occurrence from the due date until the report is received.

3. Cal Tip accident/incident report must be completed for each instance. An operator who fails to notify dispatch immediately of an accident or incident on-board or involving the coach will be subject to dismissal from this contract.
- B. Accidents with serious injury and/or significant property damage
1. Serious accidents that will likely pose a large liability exposure have additional reporting criteria:
 2. Immediately after emergency responders have been called, Contractor must notify Omnitrans' claims group, Omnitrans' Transportation Manager, Omnitrans' Dispatch, and Omnitrans' GM/CEO.
 3. Omnitrans' field supervision and other support personnel will be dispatched to the accident scene.

VIII. Transit Operations Management

- A. Contractor will provide Transit Operations Management at a level and capability to oversee its functions and employees.
- B. Contractor shall be responsible for safe and reliable bus service including supervision of daily activities of all drivers and other personnel necessary to support system operations.
- C. Contractor shall develop, implement and maintain formal procedures to be used for system monitoring and road supervisory functions.
- D. Contractor agrees to waive Wage Order 9 and operate service to appropriate level with meals/rest evenly distributed throughout the schedule.

IX. Project Manager

- A. The Contractor's Project Manager (PM) shall be responsible for oversight of this project.
- B. PM shall oversee:
 1. Contract staff
 2. Reporting

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C. PM will be required to:

1. Attend weekly Operations' update meeting
2. Be available by telephone or in person during all hours of the operational day to make decisions or provide coordination as necessary and at the request of Omnitrans.

X. Employee Performance

- A. Contractor shall be solely responsible for performance of its employees and shall take appropriate action to ensure employees perform in a professional and acceptable manner at all times. This shall include the regular practice of operator ride checks and viewing of video to monitor operator performance.
- B. Omnitrans reserves the right to withdraw the services of ANY of Contractor's employees without notice. Removed employee(s) must be replaced within 24 hours.

XI. Service Reliability

- A. Contractor shall provide timely and reliable transit services. This includes maintaining trip completion levels and on-time performance operating levels within the specified arrival and departure times.
- B. On-time performance will be closely monitored by Omnitrans and will be computed on a monthly basis by the Contractor. Omnitrans will not be obligated to pay Contractor for trips not run.
- C. Liquidated Damages may be assessed by Omnitrans for trips missed and other areas of non-performance in accordance with provisions included in this Agreement (See Section XXVI). Any additional service, beyond scheduled, must be pre-approved by the Omnitrans' CEO or their designee.

XII. Fare Collection

- A. Consultant shall collect fares from all persons riding the service provided under this agreement in accordance with the fare structure established by Omnitrans.
- B. Omnitrans reserves the right to amend the fare structure at any time during this agreement. Any changes to the fare structure shall be communicated to the Contractor in writing at least ten (10) days in advance of taking effect.
- C. Contractor shall not deny access to any person paying a valid fare without specific permission by Omnitrans dispatch or field supervision. Contractor shall honor valid

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Omnitrans' employee and dependent passes. Contractor will not issue free passes without prior approval of Omnitrans.

- D. All fares collected by Contractor shall be collected in fareboxes provided by or approved by Omnitrans. Omnitrans reserves the right to observe or perform audits and tests that Omnitrans considers appropriate to determine the adherence to the fare collecting policies and procedures.

XIII. Use of Buses and Equipment

- A. Contractor understands that vehicles and equipment provided by Omnitrans under this agreement shall be used only to provide service under this contract.
- B. Deadhead routes have been developed for each route and the operators are expected to follow these routes unless directed otherwise by Omnitrans' dispatch or field supervision.
- C. The Contractor's right to use the buses and equipment is merely a license limited for use within this scope of work and is terminable at will by Omnitrans with or without notice; and transfer or assignment of such vehicles by Contractor is strictly prohibited.
- D. Operation of vehicles utilized by Contractor in the performance of this agreement shall comply with all applicable Federal, State, and local laws and regulations governing vehicles used for common carrier passenger transportation.
- E. Contractor agrees that any equipment and/or technology purchased by Omnitrans through this Agreement immediately becomes and will remain the property of Omnitrans. Omnitrans will also retain the right to dictate the location of any equipment placed on Omnitrans' vehicles and/or facilities, and Omnitrans' equipment shall have priority consideration with regard to its placement. No modifications to Omnitrans' vehicles, equipment, or facilities will be permitted without prior written authorization from the Omnitrans' GM/CEO or their designee.
- F. Omnitrans reserve the right to dictate to Contractor how many vehicles will be used for revenue service and the span and days of service. Any additional vehicles beyond the permitted number for the service must be approved by Omnitrans in writing prior to their use.

XIV. Operators

- A. Contractor shall be entirely responsible for the employment and supervision of operators necessary to perform system operation's functions. Such responsibilities include but are not limited to:

Operator Recruitment

Screening

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Selection
Supervision
Proper Licensing
Employee Relations

Evaluation
Discipline
Retraining
Termination

B. Minimum Qualifications - as part of operator recruitment, operator must:

1. Have a minimum of three (3) years commercial driving experience
2. Have no more than two (2) moving violations or accidents within the
3. immediately preceding three (3) year period
4. Have no convictions for misdemeanor or felony driving under the influence (DUI) and no failures to appear
5. Have never been convicted of a violent crime, or a crime of moral turpitude
6. Have the legal right to work in the U.S.
7. All operators must have the ability to read and speak the English language sufficiently to, at minimum, converse with the general public, understand highway traffic signs and signals, understand street signs and maps, understand routes, schedules and detour notices, respond to dispatch, and complete accident and incident reports, run sheets, and any other document or report requested.

C. Operator Screening

1. Contractor shall procure background checks before hiring any operator the contents and source of the background check shall be approved in advance by Omnitrans.
2. Each operator must hold, and at all times maintain, the proper valid licenses and certifications required by the DMV, CHP, State and Federal regulating agencies to operate a transit vehicle in revenue and non-revenue service. Licenses and certifications shall include but not be limited to the following: a valid Class B-P (endorsed for air brakes and passenger transport) driver's license issued by the State of California, a DMV Medical Examiner's Certificate, and VTT. OFFEROR shall screen the California Division of Motor Vehicle Record (DMV Record) of each prospective operator.

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3. Contractor shall review the criminal history of each application for the position of operator and shall reject any applicant with any felony conviction. Requests for exception may be submitted in writing to Omnitrans for approval. Criminal history check must include all places of residence noted on the application.

D. Drug and Alcohol Testing Program

1. Contractor shall comply with all applicable Federal and State laws and requirements including but not limited to the FTA Drug and Alcohol Testing Programs i.e. post-accident testing, DMV pull notices, etc. The Contractor shall furnish its current Drug and Alcohol Testing Program policy to Omnitrans for review. Contractor shall pay for all required drug and alcohol screen for Contractor's operators and other safety sensitive employees.
2. Omnitrans will periodically review the Contractor's FTA Drug and Alcohol Testing Program for regulatory compliance.
3. Operator Appearance - Contractor shall provide uniforms and will ensure that uniforms are neat and clean in appearance. Uniforms will be pressed, shirt tucked, tear-free, tie and worn with a matching belt.
4. Contractor shall provide an identification badge for each employee. Identification badges shall be worn at all times while on duty and/or on OMNITRANS property.

XV. Training Requirements & Standards

Omnitrans Fleet Safety & Training Staff shall provide the initial training required to the Contractor and provide a train the trainer program for future ongoing training.

XVI. Dispatch

- A. Dispatch communications with the service shall be provided by the Omnitrans' dispatch center.
- B. Operators are required to conduct a radio check with dispatch prior to departing the bus yard.
- C. When service disruptions occur, the operators are required to immediately notify the OMNITRANS dispatcher via the Transit Master Voice/Data communications system
- D. OMNITRANS dispatch will notify operators through the communications system of any detours or other temporary service adjustments necessary.

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XVII. Field Supervision

- A. Field supervision for the service shall be provided by Omnitrans Field Supervisors.
- B. Request for field supervision support shall be made to the Omnitrans' Dispatcher who will direct the nearest field supervisor to the requested location.
- C. Examples of field supervision support include, but are not limited to:
 - 1. Disruptive passenger the operator cannot diffuse their issue
 - 2. Passenger refusal to pay or to leave the coach
 - 3. Fare box malfunction
 - 4. Accident, either vehicle collision or passenger slip and falls
 - 5. Other bus equipment malfunction
- D. The role of the Omnitrans' Field Supervisor for the service includes but is not limited to:
 - 1. Operator support
 - 2. Passenger support
 - 3. Direct operator supervision
 - 4. Accident investigation
 - 5. Initial assessment of malfunctioning equipment – possible repair
 - 6. Uniform checks
 - 7. Quality of service observations
 - 8. Assessment of the need for detour and route detour recommendation
- E. The operator shall bring to the attention of a Field Supervisor any body damage discovered on the coach during pre-trip inspection.

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XVIII. Coach Maintenance

- A. The coaches shall be housed at Omnitrans' EV/WV facilities. Maintenance of the coaches shall be performed by the Omnitrans' Maintenance Department.
- B. Clearly written and concise information is required on the Operator's Daily Report(ODR) for identifying defects regarding coach operation.
- C. At the end of each day, the last operator of the coach shall turn in a completed ODR to their Office Supervisor who will then submit all the Contractor's ODRs to the Omnitrans' Dispatcher each night.
- D. If an in-service break down occurs, the operator will notify Omnitrans' Dispatch who will handle the event with Omnitrans' Maintenance Department. The operator is to remain with the coach at all times unless directed otherwise by the Omnitrans' Dispatcher. The Omnitrans' Dispatcher with Maintenance's guidance will either, direct field supervision to the coach location for an assessment, or assign a road-call mechanic to the location for repair, or arrange a bus exchange with the Contractor's Office Supervisor, or arrange for towing the coach.

XIX. Fueling and Farebox Probes

Coach fueling and the probing and emptying of the fareboxes each evening shall be performed by Omnitrans' Utility Service Personnel.

XX. Customer Service

- A. Public Information
 - 1. Omnitrans will print and provide schedules for route(s) served by Contractor.
 - 2. Updated schedules will be provided in advance of a schedule change and must be placed in vehicles on the appropriate routes at least two (2) days prior to the changes going into effect.
 - 3. Contractor shall dispose of all outdated schedules.
 - 4. Contractor shall maintain an inventory of current schedule and call Omnitrans when inventory levels are low and there is a need for additional schedules to avoid lapse of supply.

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B. Passenger Complaints

1. Passenger and other complaints on service operation are an adverse reflection on the Contractor and Omnitrans.
2. A complaint is any written or verbal communication provided to Contractor or to Omnitrans which adversely reflect on the operation of services as provided by Contractor or which relates to any incident involving a Contractor-operated vehicle and/or operator.
3. Complaints made directly to Contractor shall be redirected to the Omnitrans' Customer Service Call Center.
4. Every complaint, concern, suggestion, or commendation concerning personnel and service provided by Contractor received by Omnitrans or Contractor must be investigated and a response developed. The investigation may include video review.
5. Any complaints that concern operator behavior, including rudeness or discourtesy, etc., that may result in disciplinary action must be thoroughly investigated with appropriate action taken and documented.
6. All complaints must be investigated and responded to within three (3) business days of receipt. Contractor shall collaborate with Omnitrans in the investigation and preparation of response.
7. Complaints, suggestions, or commendations received by the Omnitrans' Customer Service Center will be immediately entered into the Trapeze Comm application.

C. Operator Conduct

1. Operators will treat all passengers and other motorists in a courteous and respectful manner consistent with good business practices.
2. Operators are expected to greet passengers who board at the passenger doors closest to the operator in a welcoming manner.

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XXII. Levels of Service

LEVEL OF SERVICE	NUMBER OF OPERATORS REQUIRED
1	354
2	270
3	224
4	164
5	164
6	130
7	90

XXIII. Media Contact

Media inquiries regarding this service shall be directed to Omnitrans' Director of Marketing.

XXIV. Meeting Attendance

A representative of the Contractor is expected to attend a weekly Operations meeting, currently held on Wednesdays. This format is to provide an update of issues and events the Contractor's staff is experiencing performing service.

XXV. Lost and Found

- A. Contractor's operators shall tag lost articles with the date, route, run number, description of article and the operator's name.
- B. Articles shall be delivered to the OMNITRANS dispatch each evening.

XXVI. Emergency Contact

Contractor shall provide a list of 24-hour emergency contact numbers.

XXVII. Liquidated Damages

- A. Due to the nature of the services to be rendered, the Contractor and Omnitrans agrees that it is extremely difficult to ascertain actual damages that may result from failure on the part of the Contractor to perform any of its contractual obligations. Therefore the Contractor's liability shall be limited to a fixed amount at the sums stated in this section, as Liquidated Damages (LDs).
- B. LDs shall be assessed daily as they are identified.

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- C. The assessed LDs identified will be sent to the Contractor's designee for response. Once the response is received, a determination on chargeability is made by the Operations Services Supervisor. All assessed LDs which do not receive a response by the Contractor within seven (7) business days will be automatically charged to the Contractor and deducted as a line item on the monthly invoice.
- D. Assessments:
1. Five hundred dollars (\$500.00) shall be assessed for each one-way trip missed as a result of a lack of personnel.
 2. Five hundred dollars (\$500.00) shall be assessed per occurrence for passing up a passenger using a mobility device at a designated station, verified by customer complaint and OBVSS (does not include when no space is available).
 3. Five hundred dollars (\$500.00) per month where the valid complaints received against the operator, timeliness or reliability equals five or more.
 4. Five hundred dollars (\$500.00) per occurrence if an operator fails to immediately report a vehicular or passenger accident to Dispatch.
- One thousand dollars (\$1,000.00) per occurrence if an operator fails to immediately report to Dispatch a vehicular or passenger accident which requires an individual to be transported away from the accident for immediate medical treatment unless it is the operator who has become incapacitated and unable to report.
5. Five hundred dollars (\$500.00) per occurrence if an operator fails to properly secure a mobility device including but not exclusive of wheelchairs.

XXVIII. Transition of Service

- A. At the eventual conclusion of this contract, the Contractor will facilitate the transition of staff. This requirement is to ensure a smooth transition of service and to eliminate possible service disruption.
- B. Contractor agrees to cooperate and participate in the transition of this service

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XXIX. Safety and Security

- A. Contractor will ensure that all employees leave the premises at the end of each shift and do not remain on site beyond a reasonable time following the end of each shift.
- B. The contractor shall provide to the Omnitrans Office of Safety and Regulatory Compliance
- C. Compliance an updated emergency contact phone list in excel format no later than January 31 and July 31 each year. Additional updates are required when contractor makes a change in their emergency protocol.
- D. The contractor shall provide to the Omnitrans Office of Safety and Regulatory Compliance an updated contractor personnel listing in excel format no later than January 31 and July 31 each year
- E. The contractor shall provide to the Omnitrans Office of Safety and Regulatory Compliance an updated Emergency Operations Plan (EOP) and/or Continuity of Operation Plan (COOP).
- F. The plan shall delineate how the contractor plans to respond at the facilities in the event of natural disaster, robbery, civil unrest, hazmat spill, work stoppage, bomb threat, medical aid, etc.
- G. The Omnitrans Office of Safety and Regulatory Compliance provides table top drills and other training courses. The contractor will be invited to and is expected to participate.

**OPS15-55
ATTACHMENT C
PRICING**

FIXED ROUTE SERVICE

Level 1 During Periods of Work Stoppage - (Years 1-5)

Position Title		Staff Required	\$ Base Hourly (A)	*Burdened Rate % (B)	Total Hourly Billing Rate (A x B)	Total Weekly Rate
Coach Operators	40 hours	354	\$21.00	155%	\$53.55	\$758,268
Supervisor	40 hours	5	\$75.00	74%	\$130.50	\$26,100
Total						\$784,368

FIXED ROUTE SERVICE

Level 2 During Periods of Work Stoppage - (Years 1-5)

Position Title		Staff Required	\$ Base Hourly (A)	*Burdened Rate % (B)	Total Hourly Billing Rate (A x B)	Total Weekly Rate
Coach Operators	40 hours	270	\$21.00	155%	\$53.55	\$578,340
Supervisor	40 hours	5	\$75.00	74%	\$130.50	\$26,100
Total						\$604,440

FIXED ROUTE SERVICE

Level 3 During Periods of Work Stoppage - (Years 1-5)

Position Title		Staff Required	\$ Base Hourly (A)	*Burdened Rate % (B)	Total Hourly Billing Rate (A x B)	Total Weekly Rate
Coach Operators	40 hours	224	\$21.00	155%	\$53.55	\$479,808
Supervisor	40 hours	5	\$75.00	74%	\$130.50	\$26,100
Total						\$505,908

FIXED ROUTE SERVICE

Level 4 During Periods of Work Stoppage - (Years 1-5)

Position Title		Staff Required	\$ Base Hourly (A)	*Burdened Rate % (B)	Total Hourly Billing Rate (A x B)	Total Weekly Rate
Coach Operators	40 hours	164	\$21.00	155%	\$53.55	\$351,288
Supervisor	40 hours	5	\$75.00	74%	\$130.50	\$26,100
Total						\$377,388

**OPS15-55
ATTACHMENT C
PRICING**

FIXED ROUTE SERVICE

Level 5 During Periods of Work Stoppage - (Years 1-5)

Position Title		LEVEL 5 164 Operators	\$ Base Hourly (A)	*Burdened Rate % (B)	Total Hourly Billing Rate (A x B)	Total Weekly Rate
Coach Operators	40 hours	164	\$21.00	155%	\$53.55	\$351,288
Supervisor	40 hours		\$75.00	74%	\$130.50	\$26,100
Total						\$377,388

FIXED ROUTE SERVICE

Level 6 During Periods of Work Stoppage - (Years 1-5)

Position Title		Staff Required	\$ Base Hourly (A)	*Burdened Rate % (B)	Total Hourly Billing Rate (A x B)	Total Weekly Rate
Coach Operators	40 hours	130	\$21.00	155%	\$53.55	\$278,460
Supervisor	40 hours	5	\$75.00	74%	\$130.50	\$26,100
Total						\$304,560

FIXED ROUTE SERVICE

Level 7 During Periods of Work Stoppage - (Years 1-5)

Position Title		Staff Required	\$ Base Hourly (A)	*Burdened Rate % (B)	Total Hourly Billing Rate (A x B)	Total Weekly Rate
Coach Operators	40 hours	90	\$21.00	155%	\$53.55	\$192,780
Supervisor	40 hours	2	\$75.00	74%	\$130.50	\$10,444
Total						\$203,224

ITEM # F8

DATE: October 1, 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 ITS15-50
SAP ENTERPRISE RESOURCE PLANNING SYSTEM UPGRADE**

FORM MOTION

Authorize the CEO/General Manager to de-obligate \$129,188 of Federal Transit Administration (FTA) funds, \$22,000 of State Transit Assistance (STA) funds and \$11,779 of Prop 1B funds as shown in the Funding Source section, and re-obligate these funds to the SAP ERP System Upgrade project.

Authorize the CEO/General Manager to award Contract ITS15-50 to TMR Management Group, Inc., of Harrisburg, PA, for the provision of SAP Enterprise Resource Planning System Upgrade Project for a six month term, beginning October 7, 2014 and ending April 16, 2015, in the amount of \$354,670, plus a 10% contingency of \$35,467, plus 3.27% for Cost Allocation Program (CAP) in the amount of \$12,758, for a total not-to-exceed amount of \$402,895.

BACKGROUND

Omnitrans utilizes the SAP HR Support Package (SP 40) and ECC EHP 4. In order for SAP to run effectively, upgrades to the system are sometimes needed. The scope of the upgrade project includes upgrading the Solution Manager from 7.0 to 7.1, upgrading ECC from EHP4 to EHP6 and SRM from 7.0 to 7.03, and upgrading BSI Tax Factory (BSI) from 9.0 to 10.0. BSI will cease to support 9.0 at the end of November 2014. The upgrades must be completed prior to the end of the calendar year to avoid calculation errors of state and federal tax withholdings and errors on W2 forms.

In accordance with Procurement Policy 2010, Emergency & Non-Competitive Procurements, Section 1.3.3 (The continuation of necessary Omnitrans functions), the CEO/General Manager received approval from the Chairman of the Board to release Request for Proposals RFP-ITS15-50 for the provision of SAP Enterprise Resource Planning System Upgrade without obtaining approval for release from the full Board.

On September 4, 2014, staff released Request for Proposals RFP-ITS15-50. Notices were published in two local newspapers of general circulation and posted on Omnitrans' online bidding system.

Five proposals were received by the September 18, 2014 deadline. All five were deemed responsive evaluated in accordance with the evaluation criteria included in the RFP.

		TMR MANAGEMENT GROUP INC	GYANSYS INC	SAGE GROUP CONSULTING, INC	PROVISTA SOFTWARE	ASCENDOR LLP
Criteria	Points Possible					
Qualifications	20	18.60	13	12.33	15.67	10.67
Quality of Work	30	26.90	22	20	22.50	13
Experience	30	26.90	22.50	21	24	18.90
Technical Total	80	72.40	57.50	53.33	62.17	42.57
Cost/Price	20	11.67	20	12.42	2.68	14.53
TOTAL	100	84.07	77.50	65.75	64.85	57.10

TMR Management Group, Inc., ranked highest technically and provided the best overall value. TMR Management Group provided the most comprehensive work plan and their familiarity with Omnitrans' SAP system supports the aggressive schedule. TMR Management Group's proposed pricing is within the competitive range and therefore deemed fair and reasonable.

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

FUNDING SOURCES

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

FUNDING	GRANT	YEAR	PROJECT NAME	INTERNAL ORDER	AMOUNT
Deobligate					
FTA	CA-90-Z009	2013	CCTV	D1322003F	\$ 88,000
FTA	CA-90-Z009	2013	ITS Solutions	D1322003F	\$ 47,116
Subtotal					\$135,116
STA	13-OMN-B	2013	CCTV	D1322003F	\$ 22,000
Prop 1B		2013	ITS Solutions	D1322003F	\$ 11,779
Reobligate					
FTA	CA-90-Z009	2013	SAP Enhancement	D1322003F	\$ 88,000
FTA	CA-90-Z009	2013	SAP Enhancement	D1322003F	\$ 47,116

Subtotal					\$135,116
STA	13-OMN-B	2013	SAP Enhancement	D1322003S	\$ 22,000
Prop 1B		2013	SAP Enhancement	D1322032B	\$ 11,779
Funding					
FTA	CA-90-Z009	2013	SAP Enhancement	D1322004F	\$187,200
FTA	CA-90-Z009	2013	SAP Enhancement	D1322003F	\$ 88,000
FTAF	CA-90-Z009	2013	SAP Enhancement	D1322002F	\$ 47,116
STA	13-OMN-B	2013	SAP Enhancement	D1322004S	\$ 46,800
STA	13-OMN-B	2013	SAP Enhancement	D1322003S	\$ 22,000
Prop 1B		2013	SAP Enhancement	D1322032B	\$ 11,779
Total					\$402,895

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

CONCLUSION

By approving award of this contract, Omnitrans will continue to process payroll and W2s accurately and on time.

PSG:JMS:AA



CONTRACT AGREEMENT

between

CONTRACTOR

TMR MANAGEMENT GROUP, INC
355 DEAVEN ROAD
HARRISBURG, PA 17111

(hereinafter "CONTRACTOR")
Telephone: 717-379-1060
Fax: 717-652-1748
Email: mgupta@tmrmgi.com

And

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

CONTRACT DOCUMENTS

CONTRACT NO. ITS15-50

**SAP ENTERPRISE RESOURCE
PLANNING SYSTEM UPGRADE
PROJECT**

Contract Amount: \$354,670.00

Omnitrans Project Manager:

Name: Jacob Harms
Title: Director
Telephone: (909) 379-7123
Fax: (909) 889-5779
Email: jacob.harms@omnitrans.org

Contract Administrator:

Name: Alesia Atkinson
Title: Contract Administrator
Telephone: (909) 379-7134
Fax: (909) 379-7107
Email: alesia.atkinson@omnitrans.org



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ATTACHMENT A: SCOPE OF WORK

ATTACHMENT B: REGULATORY REQUIREMENTS

ATTACHMENT C: COST FILE

This Agreement is made and entered into as of this 7th day of October, 2014 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and TMR MANAGEMENT GROUP, INC. (hereinafter referred to as "CONTRACTOR").

RECITALS

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

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

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

1. SCOPE OF WORK

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

2. PERIOD OF PERFORMANCE

The term of this Agreement shall be from October 17, 2014 and continue in effect through April 16, 2015, 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.

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 Three Hundred Fifty Four Thousand Six Hundred Seventy Dollars and 00/100 Dollars (\$354,670.00), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

4. INVOICING AND PAYMENT

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

CONTRACTOR shall submit invoices in duplicate to:

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

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

- Contract number
- Invoice number
- Description of Services
- Service Dates
- Information as requested by OMNITRANS

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

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

Agreement or any other Agreement between OMNITRANS and CONTRACTOR.

5. AUDIT AND INSPECTION OF RECORDS

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

6. NOTIFICATION

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

To OMNITRANS:

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

To CONTRACTOR:

TMR Management Group, Inc.
355 Deaven Road
Harrisburg, PA 17111
Attn: Manoj Gupta, CEO

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: Jacob Harms, IT Director

- 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>
Manoj Gupta	Project Manager
Vijay Alisetty	SRM Solution Architect
Anurag Agrawal	Finance Solution Architect
Nitin Jain	HCM Solution Architect
Srinivas Tumma	Basis Technical Architect
Aditya Karkare	SAP ABAP Technical Architect
Sarvanan Dharamraj	SRM Technical Architect
Manish Chaitanya	Portal Technical Architect
Riju Guipta	Delivery Manager

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

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

8. DISPUTE RESOLUTION

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

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

9. TERMINATION FOR CONVENIENCE

OMNITRANS may terminate this Agreement in whole or in part for OMNITRANS' convenience. Omnitrans' CEO/General Manager shall terminate this Agreement by a written Notice of Termination to CONTRACTOR specifying the nature, extent, and effective date of the termination. Upon receipt of the notice of termination, CONTRACTOR shall immediately discontinue all Work affected and deliver all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Agreement, whether completed or in process, to Omnitrans' CEO/General Manager. OMNITRANS shall make an equitable adjustment in the Agreement for Work

already performed, but shall not allow anticipated profit on unperformed services. Force Majeure shall apply.

10. TERMINATION FOR BREACH OF AGREEMENT

- A. If CONTRACTOR fails to perform any of the provisions of this Agreement or so fails to make progress as to endanger timely performance of this Agreement, OMNITRANS may give CONTRACTOR written notice of such default. If CONTRACTOR does not cure such default or provide a plan to cure such default which is acceptable to OMNITRANS within the time permitted by OMNITRANS, then OMNITRANS may terminate this Agreement due to CONTRACTOR's breach of this Agreement.
- B. If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then OMNITRANS may immediately terminate this Agreement.
- C. If CONTRACTOR violates Section 26, Compliance with Lobbying Policies, of this Agreement, then OMNITRANS may immediately terminate this Agreement.
- D. In the event OMNITRANS terminates this Agreement as provided in this Section, OMNITRANS may procure, upon such terms and in such manner as OMNITRANS may deem appropriate, Work similar in scope and level of effort to those so terminated, and CONTRACTOR shall be liable to OMNITRANS for all of its costs and damages, including, but not limited, any excess costs for such Work.
- E. All finished or unfinished documents and materials produced or procured under this Agreement shall become OMNITRANS' property upon date of such termination.
- F. If, after notice of termination of this Agreement under the provisions of this Section, it is determined for any reason that CONTRACTOR was not in default under the provisions of this Section, or that the default was excusable under the terms of this Agreement, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 8, Termination for Convenience.
- G. The rights and remedies of OMNITRANS provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

11. ASSIGNMENT

This Agreement, any interest herein or claim hereunder, may not be assigned by CONTRACTOR either voluntarily or by operation of law, nor may all or any part

of this Agreement be subcontracted by CONTRACTOR, without the prior written consent of OMNITRANS. Consent by OMNITRANS shall not be deemed to relieve CONTRACTOR of its obligations to comply fully with all terms and conditions of this Agreement.

12. SUBCONTRACTING

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

Subcontractor's Name and Address	Work to Be Performed
n/a	

13. INDEPENDENT CONTRACTOR

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

14. INSURANCE

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

- A. **Commercial General Liability including Products/Completed Operations:** \$1,000,000 per occurrence for bodily and property damage

liability and \$2,000,000 aggregate; *Endorsement naming Omnitrans as Additional Insured.*

- B. **Workers' Compensation:** statutory limits or, a State-Approved program in an amount and form that meets all applicable requirements of the Labor Code of the State of California; *waiver of subrogation that includes Omnitrans.*

Additional Insured:

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

15. INDEMNITY

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

16. REVISIONS IN SCOPE OF WORK

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

17. RIGHTS IN TECHNICAL DATA

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

termination of the Work. CONTRACTOR shall be permitted to retain copies of such items for the furtherance of its technical proficiency; however, publication of this material is subject to the prior written approval of OMNITRANS. The provisions of this paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.

18. OWNERSHIP OF REPORTS AND DOCUMENTS

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

19. OWNERSHIP RIGHTS

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

Third Party Software Contractors shall be Licensed Software or Licensed Documentation, as appropriate. All Licensed Software and Licensed Documentation shall be governed by the License Agreement by and between the parties of event date herewith.

20. WORK FOR HIRE

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

21. SUBMITTAL OF CLAIMS BY CONTRACTOR

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

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

22. EQUAL OPPORTUNITY

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

23. STANDARD OF PERFORMANCE

- A. CONTRACTOR shall perform and exercise, and require its subcontractors to perform and exercise due professional care and competence in the performance of the Work in accordance with the requirements of this Agreement. CONTRACTOR shall be responsible for the professional quality, technical accuracy, completeness and coordination of the Work, it being understood that OMNITRANS will be relying upon such professional quality, accuracy, completeness and coordination in utilizing the Work. The foregoing obligations and standards shall constitute the “Standard of

Performance” for purposes of this Agreement. The provisions of this paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.

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

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

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

25. DISQUALIFYING POLITICAL CONTRIBUTIONS

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

26. COMPLIANCE WITH LAW

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

27. COMPLIANCE WITH LOBBYING POLICIES

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

28. PUBLIC RECORDS ACT

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

29. WAIVER/INVALIDITY

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

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

30. FORCE MAJEURE

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

31. CONFIDENTIALITY

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

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

- A. OMNITRANS shall review and approve in writing all OMNITRANS related copy proposed to be used by CONTRACTOR for advertising or public relations purposes prior to publication. CONTRACTOR shall not allow OMNITRANS related copy to be published in its advertisements and public relations programs prior to receiving such approval. CONTRACTOR shall ensure that all published information is factual and that it does not in any way imply that OMNITRANS endorses CONTRACTOR's firm, service, and/or product.
- B. CONTRACTOR shall refer all inquiries from the news media to OMNITRANS, and shall comply with the procedures of OMNITRANS' Public Affairs staff regarding statements to the media relating to this Agreement or the Work.

- C. If CONTRACTOR receives a complaint from a citizen or the community, CONTRACTOR shall inform OMNITRANS as soon as possible and inform OMNITRANS of any action taken to alleviate the situation.
- D. The provisions of this Article shall survive the termination or expiration of this Agreement.

33. GOVERNING LAW

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

34. MODIFICATIONS TO AGREEMENT

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

35. LICENSING, PERMITS AND INSPECTION COSTS

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

public agency relating to construction operations under the jurisdiction of such agency.

36. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, (2) Attachment A, Scope of Work, (3) Attachment B, Regulatory Requirements, (4) Attachment C, Cost File, (5) provisions of IFB-ITS15-50 and (4) CONTRACTOR's proposal dated September 18, 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

TMR MANAGEMENT GROUP, INC

P. SCOTT GRAHAM
CEO/General Manager

MANOJ GUPTA
CEO

DATE

Federal Tax I.D. No. _____

DP _____

CM _____

ATTACHMENT “A”

SCOPE OF WORK

I. Project Background and Description:

Omnitrans utilizes the SAP HR Support Package (SP 40) and ECC EHP 4. Omnitrans requires the Contractor to upgrade system to ECC EHP 6 and the other related systems referenced in Section II. System Upgrades.

Project deliverables must be completed on time to ensure that 2014 W-2 forms are issued on time and that employee paychecks reflect the updated (2015) tax tables commencing with the pay period beginning December 24, 2014.

Customizations affecting this upgrade are minimal and will be discussed in Week 4.

II. SAP System Upgrade Project:

Consultant shall provide project management oversight and technical & functional roles necessary to upgrade the following systems:

- A. Upgrade Solution Manager from 7.0 to 7.1 since SAP will cease to support 7.0
- B. Upgrade ECC from EHP4 to EHP6 and SRM from 7.0 to 7.03.
- C. Upgrade BSI TaxFactory from 9.0 to 10.0 since BSI will cease to support 9.0 at end of November 2014.

It is understood that any areas and processes not identified as within scope are assumed out of scope.

III. Key Resources:

Consultant shall support the SAP System Upgrade Project (Project) by providing Consultant(s) to be located onsite at Omnitrans' East Valley location at 1700 W. Fifth Street, San Bernardino, CA 92411.

A. SAP Technical Consultants:

1. Skills:

- a. SAP Basis Certification, Basic Java and ABAP skills are preferred.
- b. Team Lead experience
- c. Demonstrated skills in creative thinking
- d. Good interpersonal skills to assist with communications with IT and Business staff
- e. Extensive degree of creativity and latitude is required

2. Requirements:

- a. Experience with SAP ECC, BW, Solution Manager, PI, Portal. B.
- b. Experience on both ABAP and Java stack Systems
- c. A minimum of 8 years SAP BASIS experience
- d. Extensive knowledge of Windows Server Operating System and MS SQL Database platforms
- e. Must have worked for at least 2 years on system maintenance and have performed installation and system refresh
- f. Must have SAP EHP6 upgrade experience
- g. Must have experience with virtualization environments/techniques

B. SAP Functional Consultant:

1. Skills:

- a. SAP Functional Certifications are preferred.
- b. Team Leading experience
- c. Demonstrated skills in creative thinking
- d. Good interpersonal skills to assist with communications with IT and Business staff
- e. Extensive degree of creativity and latitude is required

2. Requirements:

- a. Must have SAP technical upgrade to Enhancement Packages concept
- b. Must have SAP EHP6 upgrade experience
- c. Must have SPDD, SPAU and Testing experience when upgrading the system
- d. Must have LSMW and Z-Program upgrade experience when upgrading the system.

C. SAP SRM Consultant:

1. Skills:

- a. SAP SRM Certification, Basic Java and ABAP skills are preferred.
- b. Team lead experience
- c. Demonstrated skills in creative thinking
- d. Good interpersonal skills to assist with communications with IT and Business staff
- e. Extensive degree of creativity and latitude is required

2. Requirements:

- a. A minimum of 3 years in SAP SRM (Supplier Relationship Management) 7.0 with Procurement for Public Sector (PPS)
- b. SAP Enterprise Portal (EP) experience
- c. Defined and designed sourcing, requisitioning, purchasing and contract management process using SAP SRM application
- d. Involved in full life cycle implementation includes Plan & Define, Configuration, Testing, Post Production Support, Training material preparation
- e. Must have SAP SRM 7.03 upgrade experience

III. Duration (12 weeks): Schedule breakdown

Tentative schedule below: There is some flexibility in project delivery as long as the key deliverables are maintained. It is mutually understood that business requirements, resources and dates may change subject to the applicable terms of this Scope of Work and that any such material change which specifically will impact budget, scope, timeline or resources will be addressed through a formal amendment/change order.

A. Week 1

1. Kick-off meeting and review of current landscape.
2. Review implemented SAP non-standard objects and reports.
3. Planning and Analysis
4. Partner System Listing
5. Analysis and implementation of ALE filters where required to suppress new fields that will not be mapped in /out of certain partner systems
6. Project planning, down time and Road-Map.

B. Weeks 2 and 3

1. Gather EHP 6.0 upgrade documents and SAP notes from SAP Marketplace.
2. Set the priority of steps and determine the SAP Notes on Priority.
3. Deliver workshop on EHP 6.0 upgrade and respond to audience query/questions.
4. Park and research critical questions/issues, if any.
5. Prepare documents for each business process, functionalities, objects, interfaces and reports implemented on current ECC 6.0
6. Conduct discussion on downtime restriction needs.

C. Week 4

1. Blue Print Preparation and Submission of Blueprint for final approval.

2. Approval for EHP 6.0 and SRM upgrade steps and priority.
3. Complete documentation on current SAP.

D. Weeks 4, 5 and 6

1. Apply EHP 6.0 and SRM upgrade in order of
 - a. Technical RFC, RTP
 - b. Functional and Strategic
 - c. SPDD and SPAU
2. Load technical components for ECC 6.0, Portal and BSI
3. Prepare test script/scenarios for all the SAP standard/customized business processes, functionalities, objects, interfaces and reports.

E. Weeks 7 and 8

1. Conduct training sessions to verify per test documents.
2. Verify and correct issues occurred due to upgrade.

F. Weeks 9 and 10

1. Business user testing to verify the HR, Time and Payroll process.
2. Meet to discuss the testing progress and issues.
3. Fix the issues and migrate to UAT for verification.

G. Weeks 11 and 12

1. Pack bundle for deployment
2. Update project documents
3. Prepare Checklist
4. Discuss the rollback option / process in detail by project team as a part of the project prior to the upgrade of the production boxes
5. Go/No-Go conference
6. Backup and down time
7. Deployment
8. Smoke Test
9. Post Go-Live Support

IV. Key Deliverables and Timeline:

- A. Ensure personnel is able to generate W-2 Forms for calendar year 2014
- B. Commence testing of payroll processing upgrade by December 8, 2014
- C. Commence production of paycheck processing for pay period beginning December 24, 2014.
- D. Complete BSI TaxFactory testing by November 15, 2014
- E. Production system fully operational no later than December 15, 2014

V. Technical Pre-requisites

Omnitrans is responsible for the Technical pre-requisites denoted below.

- A. POC/Sandbox system build (Copy of Production)
- B. 24x7 system availability
- C. Ensure Solution Manager availability with all basic configuration required as per pre-requisite documentation.
- D. Single point of contact from customer available at all times to support the project.
 - For any hardware/software/network/backup support;
 - Detailed description of the SAP System Landscape
 - User IDs and passwords on systems;
 - Adequate privileges for accessing the operating system of the SAP landscape
 - Connectivity

ATTACHMENT C - COST FILE

COST ELEMENTS

			SAP Enterprise Resource Planning System Upgrade Project		
1	LABOR				
	LABOR CATEGORY (Please add additional categories as necessary)	*Billing Rate \$/HR	Est. Hours	Extended Cost	Basis
	(EXAMPLE: Project Manager)	\$150.00	1,000.00		(EXAMPLE) Labor rate + (labor rate X overhead rate) + profit rate
1	Project Manger	217.50	440	\$95,700.00	150+150*0.25+150*0.20
2	Delivery Manager	130.50	240	\$31,320.00	90+90*0.25+90*0.20
3	Basis	145.00	350	\$50,750.00	100+100*0.25+100*0.20
4	Technical ABAP	130.50	160	\$20,880.00	90+90*0.25+90*0.20
5	Technical ECC Portal	130.50	80	\$10,440.00	90+90*0.25+90*0.20
6	Technical SRM	159.50	200	\$31,900.00	110+110*0.25+110*0.20
6	Functional SRM	217.50	200	\$43,500.00	150+150*0.25+150*0.20
9	Functional HCM	159.50	80	\$12,760.00	110+110*0.25+110*0.20
10	Functional Finance	159.50	120	\$19,140.00	110+110*0.25+110*0.20
11	Functional FM/GM	159.50	80	\$12,760.00	110+110*0.25+110*0.20
13	Functional Portal	159.50	40	\$6,380.00	110+110*0.25+110*0.20
12	Functional PS/MM/PM	159.50	80	\$12,760.00	110+110*0.25+110*0.20
13	Solution Manager	159.50	40	\$6,380.00	110+110*0.25+110*0.20
*Please Define Regular Rate:		\$150 = Labor rate + (labor rate X overhead rate) + profit rate		Overhead Rate:	25%
Rate and Calculation:				Profit Rate:	20%
		\$354,670.00		Labor Escalation	0%
TOTAL - LABOR (Hours/Costs)			\$1,870.00	\$354,670.00	

*Fully burdened Hourly Rate (Subtotal Rate + OH + Profit).

ITEM # F9

DATE: October 1, 2014

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

FROM: P. Scott Graham, CEO/General Manager

SUBJECT: TELECONFERENCING POLICY FOR BOARD COMMITTEES

FORM MOTION

Approve teleconferencing as an option for Board Committee Members to attend Board Committee Meetings.

BACKGROUND

At its September 10, 2014, the Executive Committee discussed consideration of permitting Board Committee Members to attend Committee Meetings by teleconference. This option would make it more convenient and allow Committee members to attend a Committee Meeting for which they would not be able to in person.

If approved, Board Committee agenda notices would be posted at Omnitrans to include each Committee Members City/County address and include a statement that each location is accessible to the public and members of the public may address the Committee from any teleconference location. Any Member that planned to attend by teleconference would also have to post the notice at its City/County office. Or, if the Member were planning to attend by teleconference from another location, the address must be provided to the CEO/General Manager's Office no later than one week prior to the meeting to ensure the address is included in the agenda posting and the location must be accessible to the public.

For purposes of determining a quorum of the Committee, as required by California Government Code 54953(b)(2)(3), at least a quorum of the members shall participate from locations within the boundaries of Omnitrans' jurisdiction, and all votes taken during a teleconferenced meeting shall be by roll call.

If approved, staff will work with the telephone services provider to take the steps necessary to permit teleconferencing in the Board Room and the Board will be notified when the service is operational.

CONCLUSION

Approving the recommendation will provide an option to Board Committee Members that would allow participation in a Committee Meeting for which they may not otherwise be able to attend.

PSG:VD

ITEM # G1

DATE: October 1, 2014

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

FROM: P. Scott Graham, CEO/General Manager

SUBJECT: PUBLIC HEARING –FACTFINDING REPORT

RECOMMENDED ACTION

That the Omnitrans Board of Directors hold a Public Hearing as required by California Government Code Section 3505.7 as to the impasse and Factfinding Panel's Report regarding negotiations between Omnitrans and Amalgamated Transit Union (ATU), Local 1704.

SUMMARY

- A Call for Public Hearing on the Factfinding Report regarding impasse with Amalgamated Transit Union, Local 1704 has been noticed for this time.
- A copy of the Factfinding Report was posted with this agenda item as Exhibit A.
- All impasse procedures including mediation and factfinding have been completed.
- Pursuant to California Government Code Section 3505.7, a public entity must conduct a public hearing on the Factfinding Report prior to imposition of the Last, Best and Final Offer.
- This public hearing is for the purpose of accepting public testimony regarding the Factfinding Report and possible implementation of Omnitrans' Last, Best and Final Offer.
- Testimony will be limited to three minutes per speaker.

BACKGROUND

On July 14-15, 2014, Omnitrans and the Amalgamated Transit Union, Local 1704, participated in fact-finding as an impasse in negotiations had been reached.

At the Board of Directors Meeting held August 6, 2014, Board Chair Wapner announced the Call for Public Hearing regarding the impasse and Factfinding Report related to Omnitrans' negotiations with the ATU, Local 1704, as required by California Government Code Section 3505.7. The public hearing was originally scheduled for September 2, 2014. As the Factfinding

Report was not received in time, the Board of Directors continued the hearing to October 1, 2014.

FINANCIAL IMPACT

There is no financial impact resulting from the public hearing.

CONCLUSION

Upon conclusion of further testimony, the hearing on this matter will be closed.

PSG:VD

CAG

EXHIBIT "A"

FACTFINDING REPORT AND RECOMMENDATIONS

In the Matter of Factfinding:)	
)	
OMNITRANS)	
)	PERB IMPASSE
Employer,)	No. LA-IM-148-M
)	
and)	DATE ISSUED:
)	
AMALGAMATED TRANSIT UNION,)	September 19, 2014
LOCAL 1704)	
)	
Union.)	

Factfinding Panel:

Impartial Chairperson:

Walter F. Daugherty
Arbitrator/Factfinder

Employer Member:

P. Scott Graham
CEO/General Manager
Omnitrans

Union Member:

William G. McLean
International Vice President
Amalgamated Transit Union

Appearances:

For the Employer:

Carol A. Greene
Deputy County Counsel
San Bernardino County

For the Union:

Benjamin K. Lunch
Attorney at Law
Neyhart, Anderson, Flynn &
Grosboll

BACKGROUND AND PROCEDURAL HISTORY

The Amalgamated Transit Union, Local 1704 (“Union”) is the certified exclusive bargaining representative for the Coach Operators Unit. This Unit consists of some 400 Coach Operators employed by Omnitrans (“Employer”), a transit agency that provides motor coach transportation services in San Bernardino County.

With respect to the impasse before the Factfinding Panel (“Panel”), negotiations on a successor Memorandum of Understanding (“MOU”) began in 2012 pursuant to its Term provisions. Negotiations continued throughout 2013, an impasse was reached and the parties attempted to resolve the bargaining deadlock in mediation. As mediation was unsuccessful, the Union submitted its request for a factfinding panel to the Public Employment Relations Board (“PERB”). By letter dated April 9, 2014 from the PERB, the undersigned was advised that he had been selected by the parties to chair the Factfinding Panel. P. Scott Graham was designated as the Employer’s Panel Member and the Union selected William G. McLean as its Panel Member.

At the request of the Chairperson, both parties waived the statutory time limits for the hearing and the completion of the factfinding process. Factfinding hearings were held on July 14 and 15, 2014 at which both parties appeared and were afforded full opportunity to present evidence and offer argument, with each party having the opportunity to present and explain its proposals and respond to the other party’s proposals. A verbatim transcript of the proceedings was provided to the Chairperson as an aid to his deliberations in this proceeding.

Pursuant to agreement of the Panel Members, the Chairperson by e-mail forwarded copies of his draft Report and Recommendations. Thereafter, it was agreed that the Panel Members

would submit their respective dissents/concurrences without the need of an Executive Session. Their respective submissions are attached.

RELEVANT STATUTORY PROVISIONS

With respect to the Panel's deliberations, the Meyers-Milias-Brown Act at §3505.4. (d) states:

(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

- (1) State and federal laws that are applicable to the employer.
- (2) Local rules, regulations, or ordinances.
- (3) Stipulations of the parties.
- (4) The interests and welfare of the public and the financial ability of the public agency.
- (5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.
- (6) The consumer price index for goods and services, commonly known as the cost of living.
- (7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

ISSUES AND RECOMMENDATIONS

At the outset it is to be observed that it is the Panel's task to take the "facts" as presented by the parties and use them as a framework on which to craft recommendations that will assist in a resolution of the impasse. It should be further noted that the Chairperson subscribes to the view that factfinding is an integral component of the negotiation process and that compromise is an essential element of this process. The following recommendations are offered with these guiding principles in mind. In such regard, rather than detailing the positions of the parties and

their respective proposals advanced during negotiations, this information will be provided in brief fashion as it specifically relates to each issue still in dispute.

During the two days of hearing, presentations were made regarding 17 contractual provisions that remained in dispute. This number was winnowed down during mediation and immediately before the factfinding hearing from the articles that were in dispute when impasse had been reached. Revised and/or modified proposals were made both during mediation and in connection with the factfinding; the most recent iterations of the parties' respective proposals are addressed here. The parties elected to first present the two major unresolved economic issues – wages and health and welfare benefits – followed with their respective presentations regarding the other MOU provisions at issue in these proceedings. This order of presentation will be followed in this Report.

Article 60 – Wages

As a common denominator underpinning the Employer's position regarding wages, the contractual Comprehensive Benefits Article, and the other provisions that have an economic component are its arguments regarding its inability to pay. The "financial ability of the public agency" is a specific criterion listed in Government Code §3505.4 (d) that is to be considered by the Factfinding Panel in crafting its findings and recommendations. The Union disputes the Employer's contention, arguing that it is within its financial capabilities to provide the various economic increases presented in its proposals. According to the Union, the Panel should focus on other Government Code §3505.4 (d) criteria, namely, the relevant increase in the consumer price index, internal wage comparisons, and comparisons with compensation packages at comparable public agencies. Although these elements are specifically treated in the discussion

and consideration of the parties' respective wage proposals, the findings and conclusions of the Chairperson are applicable to the various other proposals that have an economic element or impact.

The Employer through the testimony of Service Planning Manager Jeremiah Bryant and Treasury Manager Maurice Mansion and submission of various budget related documents developed its case as to its ability to pay. The Employer's approved operating budget from FY 2008/2009 through FY 2012/2013 decreased by some \$3 million and the amounts and relative proportions of the various funding sources changed during this period, with a reduction from about \$48 million to \$34 million in Local Transportation Funds ("LTF") (E. Ex. 1 and E. Ex. 3).¹ This reduction was offset to some extent by an increase in the use of Federal Transit Administration Funds ("FTA") for operations from \$1.7 million to \$10.9 million and, beginning in FY 2010/2012, the use of State Transit Assistance Funds ("STA") to cover operating costs. STA funds can be used for operations only when the agency's cost increases do not exceed the movement in the Consumer Price Index ("CPI").

From FY 2008/2009 through FY 2012/2013, the Employer's actual expenditures for wages, salaries, and benefits were less than the respective budget allocations by a range of some \$900,000 to about \$3 million for each fiscal year. This pattern is reflected in the April 2014 Agency Management Report that shows an underexpenditure of some \$2.4 million through April 2014 for salaries and benefits (U. Ex. 3). While this savings will be reduced as year-end accruals are recorded, it does not appear that the savings will be fully eliminated and that some

¹Employer and Union exhibits are referenced as "E. Ex. __" and "U. Ex. __," respectively. "RT" refers to the transcript.

underexpenditure in salaries and benefits as in prior fiscal years will be realized. These historical “savings” in salaries and employee benefits are apparently caused by the Employer using budgeted positions to compute the budget allocation and vacancies occurring during the year.

Although the FY 2013/2014 budget provided for a reduction by about \$200,000 in salaries and benefits, the FY 2014/2015 budget increased the salaries and benefits allocation by some \$2.7 million, or about 6.7 percent (U. Ex. 2). This increase funding reflects the implementation of the sBX services for the entire fiscal year. However, since 27 budgeted Operator positions are allocated to this service along with an unspecified number of other employees, it does not appear that the increase in salaries and benefits in the FY 2014/2015 is solely attributable to the sBX services.

The Chairperson notes that the Employer’s seven-year funding plan running through FY 2019/20200 shows a deficit of \$12.81 million and that the Fiscal Year 2015 Plan includes a \$0.5 million deficit (U. Ex. 2). It is also noted that this plan was developed in concert with the San Bernardino Associated Governments (SANBAG) and that SANBAG’s funding forecast does not anticipate any increase in funds that would eliminate or reduce the projected deficits. However, as noted above, the Employer has historically spent less for salaries and employee benefits than the approved budget amounts and the FY 2014/2015 budget provides for a 6.7 percent increase in salaries and employee benefits, not all apparently due to the full year implementation of the sBX service. As it relates to the Employer’s inability to pay position, the Chairperson notes its contentions regarding the effect of the bargaining unit’s attendance issues on its salary and benefits expenses. However, after careful consideration of the evidence presented and the parties’ respective contentions, the Chairperson cannot conclude that the Employer’s budgetary

position is such that it can be stated to a certainty that it does not have the ability to offer and pay a total economic package greater than currently offered to the Union. Its financial position, however, requires a fiscally prudent and careful approach in recommending any increases above those currently proposed.

The Employer's last offer regarding Article 60, Wages, was for no increase in year one, a 2.30 percent increase in year two, and a 2.75 percent increase in year three of the MOU. The Union's proposal proffered during the factfinding provides for a 2.3 percent increase effective March 2, 2013, a 3.4 percent increase effective March 2, 2014, and a 3.0 percent increase effective March 2, 2015. It also proposed a \$2.00 per hour differential for the operation of a vehicle more than 43 feet in length, language regarding potential changes in sBX operations, and that employees hired before January 1, 2013 and who enroll in the Employer's 457 deferred compensation plan, will receive an Employer match up to 3 percent of the employees' contribution.²

In support for its wage proposal, the Union points out that bargaining unit employees have not had a wage increase since 2009, that the relevant CPI has increased by some 9.5 percent during the relevant period, that certain management and confidential employees received a 3 percent pay increase on July 1, 2014, and that bargaining unit wages are lower than comparable transit districts and less than prevailing trends in settlement agreements. The Employer continues to assert its inability to pay, and argues that the increases given to the few management and confidential employees are not a valid basis for comparison, that the relevant external wage

²The proposal regarding "size pay" was also included in the Union's proposals regarding Article 39, Differentials, and is addressed in the discussion below regarding that Article. Since no discussion was had regarding the sBX proposal, no recommendation will be made concerning that matter.

comparisons show that bargaining unit employees are adequately compensated, and that the Union's reliance on salary data for agencies such as the Los Angeles County Metropolitan Transit District and on data for classifications other than coach operators is misplaced as such data is simply not comparable.

CPI data is a factor that the relevant provisions of Government Code §3505.4 (d) direct the Panel to consider. In applying the CPI data, it is readily apparent that since 2009 bargaining unit employees have experienced a some 9.5 percent erosion in the purchasing power of their wages provided by the Employer (U. Ex. 7). While it is acknowledged as argued by some economists that because of modifications in purchasing patterns the CPI does not reflect the true impact of inflationary increases, the upward movement in the CPI weighs in favor of a larger wage increase than currently offered by the Employer.

Regarding the salary increase received by certain management and confidential employees, this increase was limited to salary levels six through nine for which the greater disparity with external market values was found (U. Ex. 3). Management and confidential employees are at will with none of the job protections afforded by the parties' MOU here and it appears that these employees had not received any salary increase since 2009. Given that market-based comparisons led to the salary increases for these management and confidential employees and the differences in their respective employment status, the Chairperson does not find their 3 percent increase to be particularly relevant and persuasive in determining the appropriate wage increase for this bargaining unit.³ As to the external wages comparisons, such

³Although "Pay Compression issues?" was listed as a disadvantage concerning the management and confidential employees pay increases, the Chairperson reads this as a reference to its impact on the management and confidential employee salary grid (U. Ex. 1).

comparisons are often less than precise because of questions as to the identification of the proper agencies on which to make these comparisons and differences in total compensation structures, including health and welfare benefits and progression through the wage scales. In viewing the operator wages for various transit districts throughout the State, it is apparent that the more upscale coastal transit districts pay higher wages than their inland counterparts. However, some public transit districts operating “inland” pay higher coach operator wages than this Employer, e.g., Stockton’s top hourly wage is \$24.00 and Fresno’s top hourly wage is \$23.39 (U. Ex. 7). On the other hand, while most are privately operated, lower wage rates for coach operators than paid here are found in a number of transit districts.

The Riverside Transit Agency (“RTA”), the district the Employer asserts is most comparable, has a current top step rate of \$21.88 per hour (E. Ex. 1). However, for those Omnitrans employees who have a sufficient amount in their comprehensive benefit bucket to cover the CalPERS retirement deduction, the effective hourly rate for these employees is higher than paid by the RTA.⁴ And, as pointed out by the Employer, “local peers” SunLine and Mountain Transit pay \$1.82 an hour and \$2.99 an hour less, respectively, than the current top step wage provided in the current MOU here.⁵ While RTA, SunLine, and Mountain Transit compete in virtually the same labor market as the Employer, nothing in the pertinent provisions of § 3505.4 (d) (5) restricts “comparable public agencies” to only those that recruit in the same labor market.

⁴RTA Operators must pay 7 percent of their wages for CalPERS retirement.

⁵The top step wage for SunLine operators was increased by 3 percent effective May 1, 2014 (U. Ex. 8).

Government Code § 3505.4 (d) (8) directs the Panel to consider “any other facts” not specified in § 3505.4 “which are normally or traditionally taken into consideration into making the findings and recommendations.” In the Chairperson’s experience, industry settlement patterns are often afforded significant persuasive weight in devising recommendations as to the appropriate wage movement in bargaining deadlocks. Documents submitted by the Union show that SunLine and ATU Local 1277 recently concluded negotiations providing for 3 percent across the board increases effective May 1, 2014 and January 1, 2016, respectively (U. Ex. 8). These documents show that LACOMTA employees represented by the ATU received 3 percent wage increases on July 1, 2013, July 1, 2014, July 1, 2015, and July 1, 2016, respectively, and quarterly increases of either nine cents or 10 cents per hour (U. Ex. 9). This settlement did not involve coach operators. And in negotiations concluded in March 2014 for a collective bargaining agreement effective July 1, 2013 to June 30, 2016, coach operators employed at Long Beach Transit received a 5.25 percent increase effective at ratification and a 3.13 percent increase effective July 1, 2015 (U. Ex. 10).

The Employer’s arguments predicated upon economies of scale and differences in the funding sources for the LACOMTA and Long Beach Transit on the one hand and this Agency on the other are acknowledged and have been considered (E. Ex. 10). Nonetheless, the fact remains that transit industry labor settlements, at least for these two agencies and SunLine, show percentage wage increases for coach operators above those offered by this Employer.

After consideration of the evidence presented, including the various budget documents, the parties’ arguments, and the relevant provisions of Government Code § 3505.4 (d), it is the recommendation of the Chairperson that the parties agree to a 3.4 percent wage increase

retroactive to March 2, 2014 and a 3 percent increase effective March 2, 2015. The Union's proposed 2.3 percent increase effective March 2, 2013 is not recommended, for such retroactive application would effectively require the Employer to absorb a some 5.7 percent increase in FY 2014/2015 for wages alone, which excludes any additional payroll costs driven by this increase in the base rate. The Chairperson does not believe it fiscally prudent under the present economic and budget situations to impose this significant cost increase on the Employer.

As to the Union's proposal regarding the Employer's 3 percent maximum match of employee contributions to the 457 deferred compensation plan, given the wage and other increases as herein recommended, the Chairperson does not recommend that this proposal be adopted.

Article 34 – Comprehensive Benefits

Full-time bargaining unit employees currently receive a maximum monthly contribution of \$970 (\$485 per pay period for the first two pay periods of each month) to a "bucket" that is allocable in fixed order to Health, Dental, and Vision Insurance, the employee's contribution to the Public Employment Retirement Systems ("PERS"), and Optional Term Life Insurance.

With respect to the "bucket amount," the Union proposes that it be increased to up to \$525 for each full-time employee that will subsequently be adjusted each September by adding 90 percent of any increase in health insurance plan premiums to this amount, with the employee responsible for the remaining 10 percent in the plan premiums.⁶ During factfinding, the Employer proposed that the amounts be increased to \$500 following ratification, to \$512.50 in September 2014, and to \$525 in September 2015.

⁶All references herein to the bucket amount are to the pay period.

Bargaining unit employees are offered two health plans, currently United Health Care and Kaiser. Depending on the plan and coverage selected, premium rates have increased by a range of some 12 percent to 22 percent from October 2011 to October 2013.⁷ For employees enrolled in the Family Plans, their out-of-pocket costs have increased by some \$200 per month.

As previously discussed, the Chairperson did not conclude that the Employer's fiscal situation was such that it was not able to provide a total economic package more than it has currently offered. The Union's proposal for the initial increase in the "bucket" comprises about an 8.2 percent increase; the Employer's proposal provides for an initial bucket increase of some 3 percent. In light of the increase in health care premiums with the associated increase in out-of-pocket expenses for employees in the Family Plan and in recognition that the Employer's fiscal position warrants a prudent approach to increased expenditures, the Chairperson recommends that the bucket amount be increased to \$510 upon ratification, a some 5.1 percent increase.

The 90 percent of the increase in the health plan costs that the Union proposes be absorbed by the Employer for the second and third years are calculated on the respective increases in each health care provider's plans, thus six different bucket amounts result from the application of the Union's proposal. The Chairperson has reservations regarding the administration of such an outcome and, as such, is reluctant to recommend the Union's "90 percent" proposal for years two and three. As to the second and third year bucket increases, the Chairperson's review and consideration of the relevant budget data, transit industry settlements, and the parties' arguments persuade that increases in the range of 3.5 to 4 percent in September

⁷Three coverage plans are offered: single, two party, and family.

2014 and September 2015 are appropriate.⁸ It is therefore recommended that the parties agree to “bucket” pay period amounts of \$510 following ratification, \$530 effective September 2014, and \$550 effective September 2015.

The Union has proposed that any available “bucket” dollars remaining after health, dental, and vision insurance and PERS retirement contributions are met be allocated to a 457 deferred compensation plan. The Employer opposes this proposal; it has proposed that any such remaining available dollars be allocated to “optional PPO Dental” premiums instead.

Whether either the Kaiser or United Health Care Plan is selected, employees with Two-Party or Family coverage have little if any remaining “bucket” dollars for allocation to a 457 Plan. Some 135 bargaining unit employees currently have Single coverage (U. Ex. 5). After healthcare plan and PERS contributions, these employees have approximately \$240 to \$280 available each month for the Union’s proposed 457 Plan. Currently, any bucket amounts not expended “revert” to the Employer and the Employer budgets its bucket contributions on the plans selected by the employees (RT, pp. 82-85). The Union’s proposal regarding the 457 Plan contributions would represent about a \$400,000 annual increase in the Employer’s budget obligation for employee benefits, an increase the Chairperson does not believe that the Employer should be required to absorb. However, 457 Plans are attractive for some employees as they relate to their retirement goals and plans. Since the Employer has proposed to add “optional PPO Dental” premiums to the list of benefits that may be paid out of available “bucket funds,” it is recommended that employees be given the option of electing either the PPO Dental Option or

⁸It appears that these dates would be subject to change based on plan dates.

contributing an amount equal to the PPO Dental premiums to a 457 deferred compensation plan to the extent that such dollars are available.

The Employer has proposed that eligibility for the comprehensive benefits bucket contribution be limited to actively working employees as defined in Article 27 of the MOU but that contributions will continue for up to 12 months for employees on medical leave. Once these 12 months have elapsed, employees will be offered Cobra. The Union opposes the inclusion of these provisions.

Limits on the duration for which an employer will contribute to employee health and welfare plans are not unusual in collective bargaining agreements. In such regard, the recently negotiated MOU between SunLine and ATU Local 1277 provides that health and dental insurance premiums will be made for no more than one year for employees off work due to illness, injury or pregnancy (U. Ex. 8). In this light, the 12-month limit as here proposed by the Employer does not seem unreasonable, nor is the requirement that employees be actively working as defined elsewhere in the MOU unreasonable or inherently unfair. The Chairperson therefore recommends that the parties adopt the Employer's proposed modifications defining eligibility for receipt of the comprehensive benefits bucket contribution and its proposal allowing for up to 12 months of Employer contributions while an employee is on medical leave.

The Employer proposes new language that allows employees to apply to the health care trust fund administrator to opt out of health insurance coverage and, if approved, the Employer will contribute \$250 per month into a 457 deferred compensation plan while the employee is actively working. This proposal is opposed by the Union, as it has concerns that employees

opting out of the plan may drive up the premium rates for those that elect to stay in the Employer's plans.

The Employer represented that the opt-out option is available only to those employees who submit satisfactory proof of enrollment in another group health insurance plan. As such, any decision to leave the health plan would ostensibly be premised on each employee's financial picture rather than on their health or the health of any dependents. It therefore does not appear that the Employer's proposed opt-out provision would adversely affect the premium rates here. The Employer's proposal has utility and advantages for both the Employer and employees who meet the conditions to opt out of the existing health care plans. It is therefore recommended that the Employer's proposal to contribute \$250 per month into a 457 Plan for each employee who opts out of health insurance coverage and is actively working be included in the MOU.⁹

Article 19 – Shop Steward's Provision and Article 21 – Leave of Absence – Union Position

Because the Union's proposals if adopted would eliminate Article 19 as a separate contractual article and meld its provisions into Article 21, these matters are considered collectively. The Union proposes to modify Article 21 to provide for two types of leaves of absence for union business, an extended leave and a short term leave. This extended leave is for elected Union officials and allows for a leave of absence for up to three years during which wages and benefits are paid by the Employer who in turn is reimbursed by the Union. The Union's proposal addressing temporary union leave allows for a "reasonable amount of time"

⁹While the savings accruing to the Employer from the opt out provision and modifications to employee eligibility for the comprehensive bucket contribution cannot be determined, it is readily apparent that some savings will be realized. These anticipated savings should offset some increased costs to the Employer attributable to the Chairpersons' recommendations regarding its comprehensive bucket contributions.

without loss of pay or benefits for “Working Officers” and “Shop Stewards” to process grievances and perform other Union business. It establishes a procedure to request such temporary leave and provides that upon written request the Employer will pay wages lost, including pension costs, for full days on temporary union business and that for union leave of less than four hours a day the Union will pay the employee their lost wages. As noted, if this proposal were adopted, Article 19 would be eliminated as a separate MOU article.

The Employer proposes no change to Article 19, asserting that tentative agreement had been reached on its current iteration. As to Article 21, the Employer proposes a modification that would allow for one employee in a full-time position with the Union to be on a paid leave of absence for no less than three months up to the duration of their term of office, which period may be extended. The Union would reimburse the Employer for all wages and contractual benefit entitlements.

The Employer’s proposal limits the paid extended union leave to one employee, in all likelihood the Union President/Business Agent. Given the size of the bargaining unit, the Chairperson believes that this limit is reasonable. However, the Employer’s proposed language should be clarified to make it clear that the paid leave of absence shall be granted for the duration of the employee’s term of office, if so requested. With this clarification, the Chairperson recommends the adoption of the Employer’s proposal on Article 21. Further, after considering the parties’ arguments and the Union’s proposal regarding Temporary Union Leave, the language that effectively eliminates Article 19 as a separate provision, the Chairperson is not persuaded that modifications in the existing language of Article 19 are warranted. It is therefore

recommended that no change be made to Article 19 and that it remain in the MOU in its present form.

Article 24 – Sick Leave

The Union has proposed that the maximum accrual of sick leave for payoff purposes be increased from 1,200 to 2,080 hours and that the percentage payout for accrued sick leave from 841 hours to the new payout maximum of 2,080 hours be increased from 50 to 60 percent. At the hearing, the Employer stated that it was amenable to the proposed payout percentage increase but was unwilling to increase the payout maximum as proposed by the Union.

It is speculative whether the Union's proposal to increase the sick leave accumulation payout maximum would have an ameliorating effect on what the Employer claims is a serious attendance problem within the bargaining unit. This increase would also have a potential impact on the Employer's future budget liability, albeit of minor impact, for it appears that only some five bargaining unit employees currently have sick leave accumulations exceeding 1,200 hours. On balance, the Chairperson is not persuaded that the sick leave accumulation payout maximum should be increased as proposed by the Union. Since the Employer has agreed to increase the percentage payout from 50 to 60 percent for sick leave accumulations from 841 to 1,200 hours, it is recommended that the parties adopt the modification to Article 24 as proposed by the Employer.

Article 27 – Attendance

The Union has proposed that a "referral to urgent care unit" be added to the list of types of or causes of absence that are not charged against an employee under Article 27's "no fault absenteeism policy." The Union argues that the inclusion of urgent care units reflects the current

trend in the health care delivery system that urgent care facilities are supplanting traditional emergency rooms for any needed emergency treatment. The Employer opposes the addition of the referral to urgent care, arguing that these facilities are readily and routinely self-accessed and again noting its attendance issues with the bargaining unit.

The Factfinder reads the Union's proposal as requiring a referral, ostensibly from the health care insurance provider such as the procedure under Kaiser, to an urgent care unit for any resulting absence to be uncharged. It does not appear to contemplate the scenario of an employee who on his or her own accord "drops in" at an urgent care facility and obtains a note to excuse an absence. Further, Article 27 as modified in the Union's proposal requires verification of any "referral to urgent care unit" so that the absence not be charged under the attendance policy.

The Union's proposal, in the opinion of the Factfinder, reflects the ongoing changes in our national health care delivery system. Further, the language is clear that visits to an urgent care unit are not charged as an absence unless the employee is referred to an urgent care unit and verification of the referral is submitted. The Chairperson therefore recommends that Article 27 be amended as proposed by the Union.

Article 30 – Audio & Video Surveillance

The Union's proposal has two elements, one concerns the current language that allows the Employer to view audio and video surveillance recordings for one and one half hours before and after a reported incident or complaint and the other that addresses discipline that may be imposed following such review.

The Union proposes that the viewing corridor be reduced to one half hour before and after the incident/accident or complaint, arguing that the Employer has rarely used the current 180

minutes allocated. It asserts that its proposal allows the Employer more than adequate time to determine if an offense has been committed. The Employer opposes any change and while acknowledging that usually the 60-minute corridor is ample, asserts that situations may arise where the current time allowance is required and needed.

The Union's other proposal regarding Article 30 comprises new language providing that should the review of the surveillance data show no bases for the search no discipline will be imposed but where the review discloses criminal conduct, an unsafe act, or inappropriate sexual conduct the Employer may follow its "normal disciplinary process." Further, the Union proposes language that requires a second offense within one year before discipline may be imposed for any misconduct discovered in the surveillance other than the three types expressly identified and that lists factors to be considered in the imposition of any such discipline. The Employer opposes this additional language as well, noting that the current language has been upheld in arbitration and no justification has been presented for either the change in the current language or the proposed new and additional language.

The Chairperson is not persuaded that the current language regarding the 90 minute review times before and after any reported incident/accident or complaint is unreasonable or unduly obtrusive, noting that no arbitrator has so found. As to the new contractual language proposed by the Union, the Chairperson finds no compelling reason to craft what appears to be multiple disciplinary tracks for misconduct or rule violations discovered during the review of the surveillance video and unrelated to the basis for the initial review. It is therefore recommended that no changes be made in Article 30 and that the current language be continued in the MOU.

Article 35 – Vacations

The Union has proposed two modifications to the existing article: 1) the inclusion of forced overtime in calculating vacation accrual and 2) a new provision that allows bargaining unit employees to bid for partial weeks of vacation and if the employee's vacation bank is insufficient to cover the balance of the week those days will be unpaid if the employee remains on vacation.¹⁰ It is only fair and equitable, says the Union, that mandated overtime hours, like the mandated hours regularly worked, be counted toward vacation accrual. Regarding its second proposal, the Union maintains that because of the interrelation between vacations bid on a weekly basis and vacation earned on an hourly basis, employees may encounter the situation where they would have vacation time that could be used only for casual vacation.

The Employer opposes both these modifications, its position being to remain with the contractual status quo. It asserts that it is not industry practice to use overtime hours, either voluntary or forced, in calculating hours worked for determining vacation hours accrued and notes that this provision has a cost component. Concerning the provision allowing for unpaid time off in connection with vacation, the Employer says that this proposal would further exacerbate the unit's attendance problems.

As to the first proposal, the Union's argument grounded in fairness and equity concerns is noted. However, it does not appear that the prevalent practice among transit agencies that use hours worked in determining vacation earned that overtime, either voluntary or forced, is

¹⁰Article 35 includes a table specifying how many hours of vacation pay are earned for "every 26 Regular Hours Actually Worked" for four categories of continuous years of service. This article provides that time "worked in excess of the normal forty (40) hour work week will not be counted for the purpose of vacation accrual."

considered in such computations. Regarding the Union's second proposed change to Article 35, the Chairperson believes that contract language that arguably encourages employees in a service delivery industry to take time off without pay comprises a poor employment practice. As such, it is the Chairperson's recommendation that no modifications should be made in Article 35.

Article 36 – Holidays

The Union has proposed new language that provides for a separate bidding process should the Employer reduce service on any full service Holiday.¹¹ The Employer opposes this proposal, arguing that it is premature and that any reduction in transit services involves a lengthy process that would ensure sufficient time to bargain over its effects.

While it is not unusual to find what may be characterized as contingency language in a collective bargaining agreement, the Chairperson finds no sufficiently compelling reason at this point to include the Union's proposal in the negotiated agreement. It is therefore recommended that no change be made in the contractual Holidays article.

Article 38 – Overtime Pay

The Union's proposal involves two changes to the existing provision: 1) a requirement that part-time Operators under the maximum 30 hours per week limit be given forced overtime work before any full-time Operator is required to work and 2) an increase in the forced day off guarantee from four to eight hours. The Employer opposes both proposals; it offers to maintain the current language.

¹¹The collective bargaining agreement specifies 11 holidays, two that are Floating Days. Currently, no services are operated on six holidays, including Thanksgiving Day and Christmas Day.

The reasons advanced by the Union were to the effect that requiring forced overtime first be assigned to part-time Operators increases their earnings and reduces the forced overtime burden on full-time Operators and that if an employee is forced to work on an off day the employee should be compensated in full for the day, to wit, eight hours minimum pay. The Employer points out that currently there are only five part-time Operators, two being retired employees with statutory limits on the hours they may annually work, and argues that the Union's proposal would mandate that part-time employees work more hours than they are willing or able to work.

As to the forced overtime proposal regarding part-time Operators, the Chairperson first notes that he has no information as to the amount of forced overtime required of bargaining unit employees. Nonetheless, contractual language that could require every part-time Operator to work up to 30 hours each week despite no interest in so doing might, as the Employer argues, very well hinder its ability to recruit and retain part-time Operators. Further, the ratio of part-time Operators to full-time Operators is currently minimal and any effect on the amount of forced overtime worked by full-time Operators is therefore limited. As such, the Chairperson does not recommend that the Union's proposed language regarding the assignment of forced overtime to part-time Operators be adopted.

The MOU at Article 32 (C) guarantees four hours pay for employees who volunteer and work their day off. While the Union's position regarding the forcing of an employee to work on his or her off day has been considered, the Factfinder is not persuaded that under this scenario the minimum hourly guarantee in Article 38 should be twice that as provided in Article 32 (C) or in

the current iteration of Article 38. Hence, no change is recommended in the minimum hourly guarantee as currently specified in Article 38 (D) (3).

Article 39 – Differentials

Article 39 currently addresses only the pay rate for Coach Operations Instructors (“COI”). Regarding the existing provision, the Union has proposed modifications requiring the payment of the differential to any employee “who are selected to train on the line/job” and “train students,” eliminating the COI reference, and increasing the current differential from \$2.00 to \$3.00 per hour.¹² The Union has proposed new language requiring a \$2.00 per hour differential for “actual hours driving” a coach more than 43 feet long. It has also proposed a new provision regarding the selection of relief supervisors or dispatchers that, *inter alia*, limits the number of employees on the lists of qualified relief supervisors and dispatchers, provides for payment of the top step rate plus a \$3.00 hour differential for all hours assigned as a relief supervisor or dispatcher, and requires that permanent openings to these positions be filled by the senior Operator on the appropriate list.

It was undisputed that by policy employees doing either relief supervision or relief dispatcher assignments currently receive a 5 percent differential. At the hearing, the Employer agreed to the hourly differential proposed by the Union for these assignments if the 5 percent differential was eliminated.

Turning to the Union’s proposal regarding Coach Operations Instructors, the Chairperson finds to reason to change the existing language defining the conditions under which an employee

¹²This provision currently provides that employees assigned to a COI position will receive the current top step rate for the Operator plus the differential. The COI is not a separate classification in the MOU; it is an “in-house” term used to refer to Operators who provide training.

will receive the differential. However, as noted by the Union, it does not appear that the differential has been changed in more than 20 years. As such, and since the Chairperson believes that the proper training of new operators has significant implications, particularly regarding safety matters, for the Employer, it is concluded that time expended in this valuable service should be compensated at the rate equal to that given the relief supervisors and dispatchers. It is therefore recommended that the parties adopt the Union's proposal to increase the current differential for Coach Operations Instructors to \$3.00 an hour and that no other changes be made in the current MOU language.

Regarding the "Size Pay" differential proposed by the Union, except for the six flexible coaches currently operated in sBX service, all the coaches now in operation are 41 feet long excluding the bicycle racks. While this appears to be the current "industry standard," the Chairperson is hesitant to recommend a provision with potential substantial economic liability contingent on changes in bus construction or manufacturers' practices or preferences in the types of buses marketed. The inclusion of the "Size Pay" differential is therefore not recommended.

As to the Union's proposals regarding relief supervisors and relief dispatchers, the Factfinder can identify no compelling reason to limit contractually or restrict the Employer's right to determine the number of relief supervisors or dispatchers that it needs to meet its operational requirements. Although provisions regarding seniority concerning promotions within the bargaining unit are common, the supervisor and dispatcher positions are not included in this bargaining unit. It is generally acknowledged that management is entitled to substantial latitude in its selection of employees for promotions outside the bargaining unit, particularly to supervisory positions. Other than the inclusion of new language in Article 39 specifying that

employees who work as supervisors and dispatchers on a temporary basis are to be paid at the current step of the Operator range plus \$3.00 per hour, it is not recommended that the Union's other proposals regarding relief supervision and relief dispatchers be included in the MOU.¹³

Article 40 – Uniforms

The MOU's Uniforms provision identifies the items of clothing and their quantities that will be provided by the Employer, articles of clothing that may be purchased by employees and optionally worn, and allows for the wearing of an ATU tie tac or lapel pin. The Union's proposal allows for the exchange of one pair of trousers for one pair of approved shorts, adds the "[a]pproved Omnitrans new logo baseball cap" to the list of clothing supplied by the Employer, and provides that the ATU logo may be worn on the back of this cap. In its counterproposal, the Employer agreed to the exchange of the shorts for the trousers, proposed renumbering the provision regarding the wearing of summer shorts, and modified the language in such regard. The Employer did not agree to supply the new baseball cap, proposed to restrict the size of the ATU logo on the cap, and limited employees to wearing only the cap with the ATU logo or the "approved" tie tac or lapel pin. The requirement that the tie tac or lapel pin be "approved" comprises new language.

The parties' respective positions are not that far apart. The Chairperson believes that the following recommendations should serve to close this gap while protecting the respective interests of each party and not imposing an unreasonable economic burden on the Employer. In such regard, it is recommended that the approved new Omnitrans logo baseball cap be included

¹³This recommendation is contingent on the elimination of the 5 percent differential currently paid to bargaining unit employees.

in the list of authorized clothing supplied by the Employer as proposed by the Union. Since the parties have previously agreed to limit the size of the ATU logo on the lapel pin, consistency suggests that a limitation on the size of the baseball cap ATU logo is not inappropriate.

Therefore, it is recommended the Employer's proposal in such regard be adopted. With this recommendation and the current language limiting the size of the ATU lapel pin, the Chairperson is not persuaded that the Employer's proposal that only the ATU baseball cap logo or the ATU label pin may be worn at any one time should be included in the MOU.¹⁴ Because no persuasive reason was found to enact the language change proposed by the Employer regarding the wearing of the approved summer shorts, it is recommended no change be made to the current language. Lastly, since the parties have agreed to the language regarding the substitution of the approved shorts for one pair of uniform trousers, this provision should be adopted.

Article 44 – Run Shift Bidding

The Union has proposed that the current language be modified to require that the regular run bid shifts begin on the first Monday of the months of January, May, and September, respectively.¹⁵ It has proposed further that relief shifts that are currently created by Agency staff after the completion of the initial run bid be bid by the Operators in order of their preference, that relief shifts will be bid by the Operator picking the shift rather than by proxy, and that the Union will bid for those who neither appear for the bid nor leave a proxy. Further, the Union proposes

¹⁴Article 40 currently provides that only the tie tac or the lapel pin can be worn at any one time.

¹⁵The MOU states that regular run bidding is to take place at least three times annually for shifts that begin during the months of January, May, and September.

to reduce the nine and one-half hours off duty time between relief shifts to nine hours and has proposed essentially style and grammar changes to Section J.

Since the Employer concurs with the Union's proposed changes to Section J, it is recommended that this proposal be adopted. Regarding the Union's proposed to impose the "first Monday" requirement for regular run bid shifts, the Employer argues that operational necessities require some flexibility as to when these shifts are implemented. It takes the position that the Union's proposal regarding the relief shift bid process adds additional layers and further complicates the process. The Employer therefore opposes any changes to Article 44 other than the language modifications in Section J.

In considering the Union's proposed modifications to Article 44, it does not appear to the Chairperson that employees have been unduly disadvantaged or suffered any adverse consequences under the current MOU language. As such, and as the Union's proposed modification regarding the "first Monday" implementation poses problems because of operational realities or, as in the relief shift bidding, further complicates an already complex bidding/scheduling process, the Chairperson does not recommend the adoption of either proposal.

Article 47 – Report Time, Preparation Time and Sign Off Time

It is essentially undisputed that the Union's proposal to include references to the Divisional Sign On and Sign Off Terminals was in response to changes in operating procedures driven by technological advances, for the terminals replace the weigh bill process previously used. The Employer's concerns regarding the Union's proposal center on the requirement that

Operators must receive a receipt of their sign on and sign off times, which is printed by the involved electronics.

The Union's position that bargaining unit employees, particularly because of the daily changes in work hours and sign off times, should have a printed record that undisputably verifies their hours worked is not without merit. However, the Employer's concerns that language mandating such printed receipts would lead to a plethora of grievances when the equipment malfunctioned are not unfounded. On balance, the Chairperson has reservations that the negotiated MOU be amended to include language mandating that a printed receipt be given daily to bargaining unit employees. Hence, the inclusion of this mandatory sign in/sign out receipt language is not herein recommended. Because the Union's other proposed modifications to Article 47 are consistent with current operations, it is recommended that Article 47 be amended accordingly.

Article 48 – Spread Time

The Union has proposed that the term "premium" included in this Article be changed to "penalty" and that the rate for time actually worked on a spread shift be compensated at \$7.00 per hour for all time actually worked commencing with the tenth hour. It proposed further that an employee be paid \$10.00 per hour for time actually worked in the eleven or more hours worked after the time the employee began work that day. Currently, the MOU provides for a \$7.00 per hour premium for all time worked commencing eleven hours after the time the employee began work that day.¹⁶ The current \$7.00 per hour spread time premium, says the Union, was tied into

¹⁶Spread time results from an employee being assigned to a split shift, where the employee works for a number of hours, is off work for some time, and then returns to work to complete the remainder of the assigned shift. Article 48 limits the maximum spread on an Extra Board assignment to 13 hours and

the then prevailing minimum wage when initially negotiated. As the minimum wage will soon be increasing to \$10.00 an hour, the Union asserts that the spread time premium should be increased to reflect the movement in the benchmark minimum wage.

The Employer opposes the Union's proposals to replace "premium" with "penalty," to provide for receipt of the current \$7.00 per hour premium commencing with the tenth hour, and to increase the premium to \$10.00 per hour beginning with the eleventh hour worked on a spread time run. It argues that these cost increases are precluded by its financial position and that although there are currently only some five spread time runs, absences both scheduled and unscheduled require that employees be assigned from the extra board to cover these absences, thus driving up the number of spread runs for which the premium must be paid.

Inasmuch as pay differentials, whatever their genesis, are most frequently called premiums or premium pay in collective bargaining agreements, the Chairperson does not believe that the descriptive language change proposed by the Union is warranted. Further, and while acknowledging that split shifts are not desirous for most employees, no compelling reason was found for requiring that the spread time premium commence with the tenth hour as proposed by the Union. As to the Union's proposal to increase this premium from \$7.00 to \$10.00 per hour, this amounts to a some 43 percent increase, a substantial and significant increase in these still uncertain economic times and given the financial posture of the Employer. However, the spread pay differential is a flat rate, unlike overtime pay that is effectively a percentage and increases in proportion to increases in the hourly pay rate. Thus, as pay increases are negotiated over the years, the spread shift differential proportionally declines as related to the bargaining unit

the maximum spread on a "Run in any Run Bid" to 11 hours.

employees' base pay scale. Here, the Chairperson is persuaded that some increase in the spread shift premium for those employees assigned to a split shift is warranted. Again, spread shifts for most employees are less than desirable. An increase from \$7.00 per hour to \$8.00 per hour with no other change in the current contractual language is therefore recommended.

Because the proposed modification specifying that one copy of the required log be given to the on duty dispatcher rather than be attached to the waybill is the current practice, it is recommended that the proposed change to Article 48 in such regard be made.

Article 58 – Part-Time Provision/Part Time Coach Operators

The Union's proposal includes provisions establishing and relating to seniority for part-time Operators. In brief, the Union proposes that part-time Operators accrue seniority in their own classification, that part-time Operators will be assigned to a five-day work week, and that forced overtime will be assigned in inverse seniority order. The Union has proposed further that part-time Operators' uniforms are to include one casual shirt and that any increased amounts for health care given to full-time Operators be given to part-time Operators. It acknowledges that its proposed changes to Article 58 are premised on the assumption that the Employer will hire more part-time Operators. The Employer's position was that the current language of Article 58 should remain unchanged in the successor agreement.

The Chairperson first observes that seniority and its protections are sacrosanct to the Union movement. However, it does not appear that seniority protections for part-time employees are routinely included in collective bargaining agreements for transit employees. According to the Employer, it prevailed in an arbitration regarding seniority for part-time Operators, thus the Chairperson can appreciate and understand its reluctance to negotiate away this "victory" secured

in arbitration. It is therefore the recommendation of the Chairperson that the Union's proposals addressing seniority for part-time employees as well the assignment of forced overtime not be included in the MOU. As to the Union's proposal to add one casual shirt to the contractually enumerated uniform articles for part-time Operators, it is not recommended that Article 58 be amended in such regard.

Regarding the Union's proposal to increase the Employer's health care contribution for part-time employees, the Chairperson does not recommend the flat dollar increase proposed by the Union. For such an increase effectively gives part-time employees a higher percentage increase than that received by their full-time counterparts. However, for reasons of internal equities, the Chairperson recommends that the part-time bargaining unit employees receive an increase in the Employer's contribution to their health insurance benefits by an amount equivalent to the percentage increase(s) in the "bucket" amount given to full-time bargaining unit employees. This percentage is to be rounded to one integer to the right of the decimal point when expressed as a percentage.

New Article – Drug and Alcohol Testing Policy

The Union has proposed to include a new article addressing drug and alcohol testing in the MOU that, in pertinent part, prohibits the Employer from applying drug and alcohol testing requirements "beyond that applicable and enforceable under Federal law" and requires that the drug and alcohol policy for bargaining unit employees be "separate and distinct" from any other Employer drug and alcohol policy. The Employer opposes the inclusion of language regarding drug and alcohol testing in the MOU as well any restrictions on its right to impose more stringent requirements than mandated by Federal law.

The Employer points out that arbitrators have upheld its current drug and alcohol policy, concluding that the federal regulations establish a floor rather than a ceiling in matters concerning drug and alcohol testing procedures. The Union's position that the Employer should not be establishing additional testing procedures or standards beyond those provided in the applicable federal law is acknowledged. However, the arbitration decisions as represented by the Employer comport with the Chairperson's understanding of an employer's discretion under the federal law governing safety sensitive positions such as the coach operators here to adopt more stringent standards and testing procedures. Further, the Employer's obligations and responsibilities for the safe transport of the public who relies on its services cannot be gainsaid. For these reasons, the Chairperson does not recommend that the Union's proposed language pertaining to drug and alcohol testing policy be incorporated into the MOU.

As noted, an Executive Session was not held. Based on the Recommendations of the Chairperson the Panel Members concur or dissent as follows:

For the Employer:

_____ Concur

_____ Dissent

_____ Concur in Part

_____ Dissent in Part

Report Attached: _____

For the Union:

_____ Concur

_____ Dissent

_____ Concur in Part

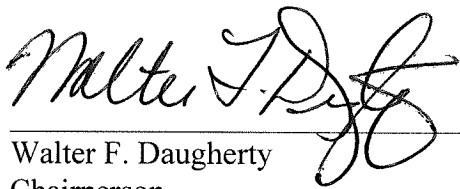
_____ Dissent in Part

Report Attached: _____

P. Scott Graham
Employer Panel Member

William G. McLean
Union Panel Member

Issued with attachments on September 19, 2014 by



Walter F. Daugherty
Chairperson

The Panel Members have met in Executive Session (*by conference calls*) on _____.
Based on the above recommendations of the Chairperson they concur or dissent
as follows:

For the Employer:

_____ Concur

_____ Dissent

_____ Concur in Part

_____ Dissent in Part

Report Attached: _____

For the Union:

_____ Concur

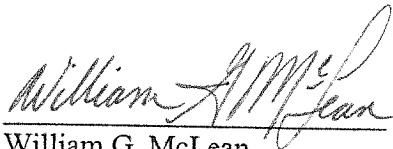
X _____ Dissent

_____ Concur in Part

_____ Dissent in Part

Report Attached: X _____

P. Scott Graham
Employer Panel Member



William G. McLean
Union Panel Member

Issued (*with attachments if any*) on _____ by

Walter F. Daugherty
Chairperson

The Panel Members have met in Executive Session (by conference calls) on _____, Based on the above recommendations of the Chairperson they concur or dissent as follows:

For the Employer:

_____ Concur

_____ Dissent

759 Concur in Part

759 Dissent in Part

Report Attached: ✓

For the Union:

_____ Concur

_____ Dissent

_____ Concur in Part

_____ Dissent in Part

Report Attached: _____


P. Scott Grahari
Employer Panel Member

William G. McLean
Union Panel Member

Issued (with attachments if any) on _____ by

Walter F. Daugherty
Chairperson

Opinion attached to Fact-finding Report in the Matter of OMNITRANS versus Amalgamated Transit Union, Local 1704;

The Union's dissent is herein explained;

Wage; The wage recommended did not address and rectify the need to make up any of an employee's losses during the period of wage freeze from April, 2009 to the current date. When no wage increases are coupled with the tremendous increases to the employee's out of pocket healthcare costs that they endured while all the administrations' employees paid none of the increased costs that bargaining unit employees absorbed the recommendation shrinks and does not address the inequities of this situation. Since April, 2009 to January, 2014 the costs of living have increased by 11% and that was/is a decrease in the value of the hourly rate by \$2.28 per hour to each employee for the entire period. The recommendation going forward will not resolve any portion of that loss and the wage falls farther back in comparative Districts.

Benefits; The recommendations on benefit increases do not repair and rectify the out of pocket costs absorbed by the bargaining unit employees nor do they eliminate the workplace inequity between the various levels of employees. The recommendation against creating equity of healthcare cost sharing between the bargaining unit members and their families and the highly paid administrative personnel and their families will not alleviate the natural mandate for equity between those who do the work and those who watch and must minister to the employees and District. This top heavy administration has chosen to take care of themselves and their families to the moral and ethical detriment of the District. Inequity and injustice cannot be ignored and go unaddressed. Bargaining unit employees ate increases in out of pocket medical costs during this period of an additional \$177 per month per employee to an additional \$731 for families per month. The very same costs paid by the bargaining unit were not paid by the administration – that defacto wage increase is ignored in the recommendations of this factfinding report.

The various Unions' proposals addressed in the remaining balance of the report with the exception of a baseball cap and logo were largely ignored or denied and will not be further addressed here.



Union Panel Member

William G. Mclean

The following is Omnitrans' response to the Factfinding Report issued following the hearing held on July 13-14, 2014. Any deviation from the Last, Best and final Offer made by Omnitrans on February 26, 2014, was conditioned upon a final agreement being reached with Amalgamated Transit Union, Local 1704. In the event that no agreement is reached and the Omnitrans' Board of Directors acts to impose terms, any imposition will be consistent with the Last, Best and Final Offer. Such imposition will not include the terms that were compromised at mediation and factfinding as all such compromises were conditioned upon a final and binding Memorandum of Understanding.

Article 60 - Wages

Omnitrans' Response: Dissent: Propose Last, Best, and Final

The statement that between 2009 and 2014, the CPI increased by approximately 9.5% misses the key economic factors that were driving the labor market and wages at that time. Within our local labor market, unemployment rates spiked to 14-15%, median wages rates fell, average hours worked declined and sales tax revenue, as measured by Local Transportation Funds fell by over 30%. Many local agencies including the County, Cities, special districts and even Omnitrans' Teamster unit employees took furloughs, pay cuts and significant layoffs on top of wage freezes. Private and public employers laid off workers and cut back wages and benefits.

During this time, Local ATU 1704 operators were generally not impacted. While the community saw actual wages decline and unemployment increase, Operators were able to maintain. Now while the rest of the community suffered, ATU1704 is asking to recoup lost purchasing power, where as a group they "lost" nothing in actual dollars. They fared better than most through the depths of the recession and are now expecting to see higher wages, because they did not see wage growth during the recession, when others lost homes, lost jobs, lost salary and saw standard of living significantly decline.

As a result of funding declines, Omnitrans is now dependent on State Transit Assistance (STA) funding for operating. STA funding had historically been used solely for capital funding. In order to use STA funding to cover operating expenses, the Transportation Development Act § 99314.6 requires agencies to meet specific efficiency standards. The key standard is that an agencies operating cost per hour increase from year to year may not exceed the corresponding year's CPI. Omnitrans must complete this test each year and has been informed by our funding agency that they are closely watching the results of this test. Should Omnitrans fail the test, Omnitrans has been informed that there is no replacement funding available and use of STA funds for operations would not be allowed, resulting in a loss of \$4 million in operating funds.

This CPI test has nothing to do with budget vs. budget, but actuals vs. actuals. As a result, Omnitrans efficiency test will be based solely on the actual expenses regardless of if there were cost avoidances compared to budget.

Using CalTrams' forecasted CPI for San Bernardino County of 2.1% in 2014 and 1.5% in 2015, the maximum increases in Salaries and Wages that Omnitrans can afford without risk to \$4 million of STA funding is 2.1% and 1.5% in 2014 and 2015, respectively. In Omnitrans existing last best and final offer of 2.5% and 2.75%, Omnitrans was already putting STA funding at risk, but Management had committed

to ensuring that increases in other cost areas are kept low enough that Omnitrans will meet the STA efficiency tests. An increase of 3.4% would not be possible to offset with further cost savings in order to meet these standards.

Specifically, Salaries and Benefits account for 58.6% of Omnitrans budget. Under Omnitrans offer of a 2.5% increase as in the Last Best and Final, Omnitrans' other expense increases would be capped at 1.5%, an amount that is below the inflation, but Omnitrans believes this is achievable through strict cost containment. If on the other hand, Omnitrans were to offer 3.4%, all of Omnitrans' other expenses would need to see a growth of no more than 0.25%, an amount that is 1/8th of the expected inflation rate and completely unrealistic. This is especially true in light of the testimony received regarding the other large components of the other expenses which include fuel (historically volatile) and insurance (rates set by outside agencies) If this increase were to occur, Omnitrans operating funding would decline by \$4.0 million dollars from STA funds and Omnitrans would be forced to cut service, directly impacting ATU 1704 members, and would require the implementation of other cost savings measures likely including wage freezes, layoffs, etc. in order to balance its budget.

During the recession, Omnitrans tapped every available funding source for operating expenses. This was necessary to maintain service and ultimately maintain wages for coach operators. Omnitrans practiced prudent fiscal management to stave off deeper cuts in wages, jobs or service. In preparation for future, Management took prudent and precautionary action to reduce administrative costs by restructuring the agency which included the elimination of the Chief Financial Officer, Director of Planning and Director of Safety and Regulatory Compliance; in addition to imposing a 10% fee to all management confidential employees on their health premium payment. These changes occurred partially through the year, but were aimed at reducing expenditures in FY2015. As a result these savings from the restructuring of administration, an annual saving of approximately \$0.5 million, was saved on overall salary to close the projected budget deficit.

However, Omnitrans no longer has additional revenue sources to call on. When the ATU International challenged PEPRF through the US Department of Labor, Omnitrans Federal Funding was put on hold. Omnitrans was forced to plan for a 30% reduction in service and employees before the interim agreement was reached to allow for the release of the federal funds. There were no other sources that could be drawn on to make up for the frozen federal funds. Should Omnitrans over extend itself financially with a 3.4% wage increase, it would not be practicing prudent financial practices and any hiccup would put our vital service to the community and the jobs of our employees at risk.

The wage and benefit recommendation by the ATU would burden the Agency with a \$3.4 million operational budget increase over the next 3 years compared to the \$1.99 million offered by Omnitrans. This would not only severely impact other operating cost centers but jeopardize STA funding which would result in service reductions and workforce reductions.

Omnitrans believes that by offering a fair and prudent wage increase of 2.5% and 2.75%, similar to all other agency represented employees, it allows Omnitrans to maintain its fiscal responsibility while relying on limited funding sources. This wage increase maintains and improves upon current standard of living compared to the expected CPI.

The Last, Best and Final Offer proposed by Omnitrans offered increases of 2.5% in 2014 and 2.75% in 2015. However, if no final agreement is reached, the Last, Best and Final Offer requires a 5% salary reduction upon imposition in order to balance the financial impact of the imposition as it relates to Wage Order 9 and other terms effected by imposition.

Article 34 – Comprehensive Benefits

Omnitrans' Response: Dissent: Proposes Last, Best, and Final language based upon current financial conditions. Refer to Article 60 Dissent response.

In addition, ATU, Local 1704 currently receives the medical coverage through the Teamsters' Trust. Pursuant to the Trust documents, employees that are represented must have a valid collective bargaining agreement in order to continue coverage. As such, if Omnitrans is forced to impose the Last, Best and Final Offer, the benefit contributions will remain as proposed by Omnitrans and replacement benefits will need to be identified and procured.

Article 19 – Shop Steward's Provision and Article 21 – Leave of Absence – Union Position

Omnitrans' Response: Dissent in Part, any compromise on existing language was and is conditioned upon reaching a fully integrated agreement.

Changes to Article 21 based upon further negotiations, any compromise on existing language was and is conditioned upon reaching a fully integrated agreement.

Article 24 – Sick Leave

Omnitrans' Response: Concur in part, any compromise on existing language was and is conditioned upon reaching a fully integrated agreement.

Article 27 – Attendance

Omnitrans' Response: Dissent in part, any compromise on existing language was and is conditioned upon reaching a fully integrated agreement. Omnitrans does not agree to the acceptance of Urgent Care documentation in place of emergency room documentation.

Article 30 – Audio & Video Surveillance

Omnitrans' Response: Concur

Article 35 – Vacations

Omnitrans' Response: Concur

Article 36 – Holidays

Omnitrans' Response: Concur

Article 38 – Overtime Pay

Omnitrans' Response: Concur.

Article 39 – Differentials

Omnitrans' Response: Concur in part any compromise on the Last, Best and Final Offer was and is conditioned upon reaching a fully integrated agreement.

Article 40 – Uniforms

Omnitrans' Response: Concur

Article 44 – Run Shift Bidding

Omnitrans Response: Concur

Article 47 – Report Time, Preparation Time and Sign Off Time

Omnitrans' Response: Concur

Article 48 – Spread Time

Omnitrans Response: Concur in part, any compromise on existing language was and is conditioned upon reaching a fully integrated agreement. No increase was provided in the Last, Best and Final Offer and if Wage Order 9 is required to be implemented due to imposition, then the spread time cost to the agency would increase due to route restructuring and no increase in spread time pay would be included in the imposition.

Article 58 – Part-Time Provision/Part Time Coach Operators

Omnitrans Response: Concur

New Article – Drug and Alcohol Testing Policy

Omnitrans Response: Concur