



BOARD OF DIRECTORS MEETING
WEDNESDAY, SEPTEMBER 7, 2016 – 8:00 A.M.
OMNITRANS METRO FACILITY
1700 WEST 5TH STREET
SAN BERNARDINO, CA 92411

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

A. CALL TO ORDER

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

B. ANNOUNCEMENTS/PRESENTATIONS

1. Next Board Meeting: Friday, September 30, 2016 – 8:00 a.m. **NOTE DATE**
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 #E14 Action on Consent Calendar.

- | | |
|---|----|
| 1. Approve Board Minutes – August 3, 2016 | 7 |
| 2. Receive and File Administrative and Finance Committee Minutes – July 14, 2016 | 12 |
| 3. Receive and File Plans & Programs Committee Minutes – March 24, 2016 and December 8, 2015 | 15 |
| 4. Receive and File Construction Progress Report No. 49 through July 31, 2016 – sbX E Street Corridor BRT Project | 22 |



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E. CONSENT CALENDAR CONTINUED

5. Receive and File Summary of Risk Assessment Results and Fiscal Year 2017 Internal Audit Workplan	30
6. Authorize CEO/General Manager to Sign Joint Procurement Memorandums of Understanding with Victor Valley Transit Authority, Mountain Transit and Morongo Basin Transit Authority	56
7. Adopt Title VI Disparate Impact and Disproportionate Burden Policy	74
8. Issue Call for Public Hearing for Major Service Change Proposal for Route 215	79
9. Authorize CEO/General Manager to Sign Cooperative Service Agreement with Pass Transit	81
10. Authorize Release, Request for Proposals RFP-MKP17-18, Passenger and sbX Corridor Business Surveys	89
11. Authorize Amendment 2, Sole Source Contract ITS16-07, Transitmaster Hardware Upgrade and Training and Disposition of 50 Obsolete Integrated Vehicle Logic Units (IVLU) and Mobile Display Terminals (MDT)	91
12. Authorize Award, Contract MNT17-09, Auction Services	101
13. Press Articles and Letters of Interest to the Board	161
14. Action on Consent Calendar	

F. DISCUSSION ITEMS

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

1. CEO/General Manager's Report	163
2. Authorize Award, Contract MNT17-08, West Valley Hydraulic Vehicle Lifts Replacement	164
3. Authorize Award, Contract OPS17-07, 110 Tablets and Shared Cellular Data Plan	190

G. PUBLIC HEARING

There is no Public Hearing scheduled.

H. BOARD BUSINESS

Closed Session

1. Conference with Labor Negotiator P. Scott Graham concerning labor negotiations with Amalgamated Transit Union Local No. 1704 regarding the Coach Operator Unit, pursuant to Government Code Section 54957.6
2. Conference with Labor Negotiator P. Scott Graham concerning labor negotiations with Teamsters Union Local No. 166 regarding the Maintenance and Administrative/Support Unit, pursuant to Government Code Section 54957.6
3. Conference with Legal Counsel – Anticipated Litigation – Significant Exposure to Litigation pursuant to Paragraph (2) or (3) of subdivision (d) of Section 54956.9: 1 case
4. Conference with Legal Counsel George Ordonez, pursuant to Government Code Section 54956.9(a), Case No. CIVDS1400420, Robert Miller vs. Omnitrans



**BOARD OF DIRECTORS MEETING
WEDNESDAY, SEPTEMBER 7, 2016 – 8:00 A.M.
OMNITRANS METRO FACILITY
1700 WEST 5TH STREET
SAN BERNARDINO, CA 92411**

I. REMARKS AND ANNOUNCEMENTS

J. ADJOURNMENT

ITEM # D1

DATE: September 7, 2016

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

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

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

FORM MOTION

Staff hereby provides a listing of principals and subcontractors associated with action items on the agenda for the Board of Director's Meeting scheduled September 7, 2016.

Item	Contract	Principals & Agents	Subcontractors
#E11	Authorize Amendment 2 Sole Source Contract ITS16-07 Transitmaster Hardware Upgrade & Training & Disposition of 50 Obsolete Integrated Vehicle Logic Units (IVLU) and Mobile Display Terminals (MDT)	<i>Trapeze Software Group, Inc. Cedar Rapids, IA Eric Herrmann, Chief Financial Officer</i>	<i>None</i>
#E12	Authorize Award Contract MNT17-09 Auction Services	<i>CHP Enterprises dba Ken Porter Auctions James Ido Vice President</i>	<i>None</i>
#F2	Authorize Award Contract MNT17-08, West Valley Hydraulic Vehicle Lifts Replacement	<i>Autolift Services, Inc. Los Alamitos, CA Robin Woodson, CFO, Secretary</i>	<i>K C Backhoe, Inc. Norco, CA Hof & Yates Rebar, Inc. Long Beach, CA Full Blast Concrete Cutting, Inc. Fullerton, CA Delta Electric Santa Clarita, CA</i>
#F3	Authorize Award	<i>Cellco Partnership dba Verizon</i>	<i>None</i>

Item	Contract	Principals & Agents	Subcontractors
	Contract OPS17-07 110 Tablets and Shared Cellular Data Plan	<i>Wireless</i> <i>Basking Ridge, NJ</i> <i>Todd Loccisano, Executive</i> <i>Director-Enterprise and</i> <i>Government Contracts</i> <i>CherryStoneIT, Inc.</i> <i>Huntington Beach, CA</i> <i>Keith DiCarlo, President</i>	

PSG:JMS

CONFLICT OF INTEREST FORM

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

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

BOARD MEMBER INFORMATION

BOARD MEMBER NAME	CITY/COUNTY NAME	MEETING DATE

CAMPAIGN CONTRIBUTIONS

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

FINANCIAL INTEREST

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

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

SIGNATURE

Board Member Signature

Date

ITEM # _____ E1 _____

**BOARD OF DIRECTORS' MEETING
MINUTES OF AUGUST 3, 2016**

A. CALL TO ORDER

Chairman Sam Spagnolo called the regular meeting of the Omnitrans Board of Directors to order at 8:02 a.m., Wednesday, August 3, 2016, at the Omnitrans Facility located at 1700 West 5th Street, San Bernardino, California.

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

BOARD MEMBERS PRESENT

Mayor Pro Tem Sam Spagnolo, City of Rancho Cucamonga – Chairman
Council Member Ron Dailey, City of Loma Linda – Vice Chairman
Mayor Carey Davis, City of San Bernardino
Mayor Richard DeLaRosa, City of Colton
Mayor Pro-Tem Debra Dorst-Porada, City of Ontario - Alternate
Mayor Paul Foster, City of Redlands - Alternate
Council Member Penny Lilburn, City of Highland
Mayor Ray Musser, City of Upland
Supervisor James Ramos, County of San Bernardino
Council Member Dick Riddell, City of Yucaipa
Council Member John Roberts, City of Fontana
Mayor Deborah Robertson, City of Rialto
Mayor Pro Tem Sylvia Robles, City of Grand Terrace
Mayor Dennis Yates, City of Chino

BOARD MEMBERS NOT PRESENT

Mayor Paul Eaton, City of Montclair
Supervisor Josie Gonzales, County of San Bernardino
Council Member Ed Graham, City of Chino Hills
Supervisor Curt Hagman, County of San Bernardino
Supervisor Robert Lovingood, County of San Bernardino
Supervisor Janice Rutherford, County of San Bernardino

OMNITRANS' ADMINISTRATIVE STAFF PRESENT

P. Scott Graham, CEO/General Manager
Diane Caldera, Director of Operations
Nathan Churan, Director of Special Transit Services
Jack Dooley, Director of Maintenance
Marge Ewing, Director of Human Resources, Safety & Regulatory Compliance
Samuel Gibbs, Director of Internal Audit
Jacob Harms, Director of Information Technology
Andres Ramirez, IPMO Project Manager
Jennifer Sims, Director of Procurement
Jeremiah Bryant, Service Planning Manager
Anna Jaiswal, Development Planning Manager
Maurice Mansion, Treasury Manager
Omar Bryant, East Valley Maintenance Manager
Ray Maldonado, Employee Relations Manager
Tom Dahlin, IPMO Safety Manager
Eugenia Pinheiro, Contracts Manager
Kathy McClure, Sr. Contract Administrator
Christine Van Matre, Contracts Administrator
Krystal Turner, Contracts Administrator
Ross Hrinko, Safety & Regulatory Compliance Specialist
Mark Crosby, Security & Emergency Preparedness Coordinator
Vicki Dennett, Executive Assistant to CEO/General Manager

LEGAL COUNSEL

Erica Vega, Legal Counsel

B. ANNOUNCEMENTS/PRESENTATIONS

1. Next Board Meeting: Wednesday, September 7, 2016, 8:00 a.m.
Omnitrans Metro Facility Board Room

Employees of the Quarter: Presented to Phillip Puleo from Operations; Jay Alva from Maintenance; and Frank Flores from Procurement.

C. COMMUNICATIONS FROM THE PUBLIC

1. Patricia Sachs spoke on behalf of disabled passengers in the Omnitrans service area. She loves the sbX and appreciates Omnitrans services overall, but expressed her concern that some of the people who need services are being left out, in particular at the Drayson Center and those from Poss-Abilities. She requested that we add two additional bus routes, one for the Drayson Center in Loma Linda, and one for The Way World Outreach on Hallmark Parkway. Member Robles stated that she is an active member of the Drayson Center, and has observed transportation availability from both Access and RTA.
2. Rebecca, the Transportation Manager from The Way World Outreach, voiced her support for needed services as expressed by Ms. Sachs, particularly for those with disabilities.

Chairman Spagnolo directed that CEO/General Manager Graham have staff look into the concerns expressed by both Patricia Sachs and Rebecca.

D. POSSIBLE CONFLICT OF INTEREST ISSUES

There were no Conflict of Interest Issues.

E. CONSENT CALENDAR

1. Approve Board Minutes – July 6, 2016
2. Receive and File Executive Committee Minutes – June 10, 2016
3. Receive and File Administrative and Finance Committee Minutes – June 9, 2016
4. Receive and File Agency Management Report – Fiscal Year 2016 4th Quarter
5. Receive and File Affirmative Action Status Report – As of July 11, 2016
6. Receive and File Construction Progress Report No. 48 through June 30, 2016 – sbX E Street Corridor BRT Project
7. Receive and File sbX E Street Corridor BRT Project Quarterly Report – June 2016
8. Receive and File Fiscal Year 2016 Management Plan Strategic Initiatives – Fourth Quarter Report
9. Receive and File Fiscal Year 2016 Key Performance Indicators – Fourth Quarter Report
10. Authorize Assignments – Contracts IPMO13-145, Verizon Managed Router Services; OPS10-01, Onboard Video Surveillance System; OPS15-198, Onboard Video Surveillance System Paratransit Vehicles; SAS14-09, Security Services; MNT14-243C, Transmission Parts; OPS16-01, Modular Wheelchair Restraint Stations and Passive Rear-Facing Systems; and MNT16-14H, New Flyer Bus Parts
11. Authorize Release, Invitation for Bids IFB-IPMO17-16 – Vehicle Maintenance Facility (VMF) Modification Work
12. Authorize Release, Request for Proposals RFP-ITS17-17 – Next Generation Firewall Replacement
13. Authorize Release, Invitation for Bids IFB-MNT17-01, Rebuilt Parts and Services
14. Authorize Release, Invitation for Bids IFB-MNT17-05, Standby Generator and Automatic Transfer Switch Service
15. Authorize Release, Invitation for Bids IFB-MNT17-24, John Deere Bus Parts II
16. Approve New Position and Approve Position and Budget Transfer
17. Approval of Re-evaluation of Existing Positions
18. Press Articles and Letters of Interest to the Board

M/S (Yates/Lilburn) that approved Consent Calendar Items 1 and 3-18. Motion was unanimous by Members present.

Member Musser pulled Item E2 for discussion, stating that in his opinion temporary veteran recognitions aren't adequate, and expressed his support for more permanent recognitions, relating how the City of Upland raised funds for such a project. M/S (Robertson/Yates) that approved Item E-2. Motion was unanimous by Members present, with the exception of Member Davis, who abstained.

Member Ramos arrived at 8:18 a.m.

F. DISCUSSION ITEMS

1. CEO/General Manager's Report

CEO/General Manager P. Scott Graham reviewed the CEO/General Manager's Report. Mr. Graham introduced Nathan Churan, newly-hired Director of Special Transit Services. Mr. Churan spoke briefly about his background and qualifications.

Alternate Member Dorst-Porada arrived at 8:22 a.m.

2. Surplus Vehicles for Disposal

M/S (Lilburn/Ramos) that offered surplus vehicles listed in Attachment A in "As Is Condition" to: 1) Joint Powers Authority (JPA) member entities first, then 501(c)(3) organization; and 2) Authorize the CEO/General Manager to release to auction any remaining surplus assets listed on Attachment A through the current contracted agent, Bar None Auctions, Rancho Cordova, California. Motion was unanimous by members present.

3. Authorize Award – Contract MNT17-10 – Twenty-seven Fuel Efficient Mid-size Sedans

Member Ramos left the proceedings at 8:28 a.m. and returned during Closed Session.

M/S (Yates/Musser) that authorized the CEO/General Manager to award Contract MNT17-10 to Enterprise Fleet Management, Inc. of Anaheim, CA, for the provision of Twenty-seven Fuel Efficient Mid-size Sedans in the amount of \$764,908.14, and Maintenance Services for five years from date of delivery in an amount not to exceed \$121,392, for a total contract not-to-exceed amount of \$886,300.14, plus a contingency of \$12,000 and a 3.27% Cost Allocation Plan (CAP) of \$23,186, for a total project amount not to exceed \$921,486.14. Motion was unanimous by Members present.

G. PUBLIC HEARING

There was no Public Hearing scheduled.

H. BOARD BUSINESS

Closed Session

The Board adjourned to Closed Session at 8:30 a.m.

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

2. Conference with Labor Negotiator P. Scott Graham concerning labor negotiations with Teamsters Union Local No. 166 regarding the Maintenance and Administrative/Support Unit, pursuant to Government Code Section 54957.6
3. Conference with Legal Counsel George Ordonez, pursuant to Government Code Section 54956.9(a), Case No. CIVDS1400420, Robert Miller vs. Omnitrans.

Open Session reconvened at 8:48 a.m. with no reportable action.

I. REMARKS AND ANNOUNCEMENTS

Member Davis announced the second annual Air Fest, scheduled at San Bernardino Airport on Saturday, September 10.

J. ADJOURNMENT

The Board adjourned at 8:49 a.m. The next regular meeting is scheduled Wednesday, September 7, 2016, at 8:00 a.m., with location posted on the Omnitrans website and at Omnitrans' San Bernardino Metro Facility.

Prepared by:

Christine Vega, Administrative Secretary

ITEM # E2

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

A. CALL TO ORDER

Acting Committee Chair John Roberts called the regular meeting of the Administrative and Finance Committee to order at 8:00 a.m., Thursday, July 14, 2016.

1. Pledge of Allegiance
2. Roll Call

Committee Members Present

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

Committee Members Not Present

Council Member Ed Graham, City of Chino Hills – Chair
Supervisor Curt Hagman, County of San Bernardino

Others Present

Mayor Pro-Tem Sam Spagnolo, City of Rancho Cucamonga

OmniTrans Administrative Staff Present

P. Scott Graham, CEO/General Manager
Diane Caldera, Director of Operations
Jack Dooley, Director of Maintenance
Marge Ewing, Director of Human Resources/Safety & Security
Andres Ramirez, IPMO Program Manager
Jennifer Sims, Director of Procurement
Don Walker, Director of Finance
Wendy Williams, Director of Marketing/Planning
Omar Bryant, East Valley Maintenance Manager
Maurice Mansion, Treasury Manager
Ben Greenbeck, IT System Coordinator
Mark Crosby, Security & Emergency Preparedness Coordinator

B. ANNOUNCEMENTS/PRESENTATIONS

The next Committee Meeting is scheduled Thursday, August 11, 2016, at 8:00 a.m.

C. COMMUNICATIONS FROM THE PUBLIC

There were no communications from the public.

D. POSSIBLE CONFLICT OF INTEREST ISSUES

There were no conflict of interest issues identified.

E. DISCUSSION ITEMS

1. Approve Administrative & Finance Committee Minutes – June 9, 2016

M/S (Wapner/Spagnolo) that approved the Committee Minutes of June 9, 2016. Motion was unanimous by Members present.

2. Recommend the Board of Directors Receive and File Construction Progress Report No. 48 through June 30, 2016 – sbX E Street Corridor BRT Project

IPMO Program Manager Andres Ramirez presented this item. Pavement work is progressing; the east side of the street is completed and work is ongoing on the west side. The PA system contract has been awarded and the NTP will be issued later this month. The VMF final acceptance documents are being prepared for contract closeout. Budget hasn't changed; estimate at completion is \$188.6 million.

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

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

Finance Director Don Walker presented this item, discussing the average cost of Omnitrans' fuel cost over the last 12 months of \$0.68 per gallon. It was budgeted at \$0.92 per gallon, resulting in a net savings of \$1.1 million over FY15-16. FY16-17 fuel costs are estimated at \$0.65 per gallon. Mr. Walker will continue to monitor and report to this committee.

This item was received and filed.

4. Recommend to Board of Directors, Approve New Position and Approve Position and Corresponding Budget Transfer

M/S (Wapner/Gilbreath) that recommended 1) Approve new position, Executive Staff Assistant, Level VI, and transfer associated costs for salary and benefits of \$82,474 (mid-point salary and benefits) for Fiscal Year 2017 from Miscellaneous Expense to Salary and Benefits in the Administration Cost Center; and 2) Authorize the transfer of the Administrative Secretary position and the corresponding budget from the Executive

Office to the Human Resources/Safety & Regulatory Compliance Department. Motion was unanimous by Members present.

5. Approval of the Re-evaluation of Existing Positions

M/S (Wapner/Musser) that recommended 1) Approve the re-evaluation of Operations Services Supervisor from Level VI to Level V, with a new title of Purchased Transportation Administrator, effective August 3, 2016; and 2) Approve the Paratransit Eligibility Technician removal from the represented Teamsters Union Local No. 166 to the Management Confidential classification, Level VIII. (The Union has concurred to this transfer.) Motion was unanimous by Members present.

6. Authorize Release – IFB-IPMO17-16 – Vehicle Maintenance Facility (VMF) Modification Work

M/S (Robles/Musser) that recommended the Board of Directors authorize the CEO/General Manager to release Invitation for Bids IFB-IPMO17-16 for the provision of Vehicle Maintenance Facility (VMF) Modification Work. Motion was unanimous by Members present.

F. ADJOURNMENT

The Administrative and Finance Committee meeting adjourned at 8:13 a.m.

The next Administrative and Finance Committee Meeting is scheduled Thursday, August 11, 2016, at 8:00 a.m., with location posted on the Omnitrans website and at Omnitrans' San Bernardino Metro Facility.

Prepared by:

Christine Vega, Administrative Secretary

ITEM # _____ E3

**PLANS AND PROGRAMS COMMITTEE
MINUTES
MARCH 24, 2016**

A. CALL TO ORDER

The Plans & Programs Committee Meeting was called to order by Committee Chair Penny Lilburn at 2:36 p.m., March 24, 2016.

Committee Members Present

Council Member Penny Lilburn, City of Highland – Committee Chair
Council Member Alan Wapner, City of Ontario – via Teleconference

Committee Members Not Present

Council Member Ron Dailey, City of Loma Linda
Council Member Dick Riddell, City of Yucaipa
Mayor Deborah Robertson, City of Rialto
Mayor Pro Tem Sylvia Robles, City of Grand Terrace
Supervisor Janice Rutherford, County of San Bernardino
Mayor Pro Tem Sam Spagnolo, City of Rancho Cucamonga
Mayor Dennis Yates, City of Chino

OmniTrans Administrative Staff Present

P. Scott Graham, CEO/General Manager
Samuel Gibbs, Director of Internal Audit
Jacob Harms, Director of Information Technology
Jennifer Sims, Director of Procurement
Andres Ramirez, Program Manager, IPMO
Wendy Williams, Director of Marketing and Planning
John Steffon, Transportation Manager, East Valley
Jeremiah Bryant, Service Planning Manager
Omar Bryant, East Valley Maintenance Manager
Anna Jaiswal, Development Planning Manager
Maurice Mansion, Treasury Manager
Mark Crosby, Safety & Regulatory Compliance Specialist
Vicki Dennett, Executive Assistant to the CEO/General Manager

B. ANNOUNCEMENTS/PRESENTATIONS

There were no announcements.

C. COMMUNICATION FROM THE PUBLIC

There were no comments from the public.

D. POSSIBLE CONFLICT OF INTEREST ISSUES

There were no conflicts of interest issues identified.

E. DISCUSSION ITEMS

1. Approve Plans & Programs Committee Minutes – December 8, 2015

Motion was moved forward to the next committee meeting.

2. Recommend to Board of Directors, Authorize CEO/General Manager to Sign Cooperative Service Agreements with Victor Valley Transit Authority and Mountain Transit

Service Planning Manager Jeremiah Bryant presented this item, which resulted from SANBAG's 2014 transit efficiency study.

These agreements will establish a mutual aid framework that provides the mechanism for Omnitrans to offer and bill for aid provided upon request to neighboring transit agencies in the event of accidents, incidents, mechanical issues or similar occurrences. Additionally, if the connecting roads are closed by fire, snow or for other reasons, Omnitrans agrees to help collect riders for VVTA and Mountain Transit, the anticipated collection site identified as the San Bernardino Transit Center.

The Committee directed this item be moved to the Board without recommendation by Committee as a quorum was not present.

3. Recommend to Board of Directors, Adoption of Fiscal Year 2016-2017 Service and Marketing Plans

Service Planning Manager Jeremiah Bryant presented the Service Plan and briefly discussed the seven sections:

1. Intro/Background
2. Ridership Trends
3. Proposed Changes
4. FY2017 Service Forecasts
5. Fare Structure
6. Public Input
7. Title VI

Two new grant-funded programs included in the FY2017 Plan are the Yucaipa/Redlands to San Bernardino Transit Center Freeway Express, and the OmniGo Ontario Airport

Shuttle Partnership. Amendments to the Plan will be brought forward as partnerships are formed. Once Redlands Rail is operational in five years, the service will stop at Redlands Mall rather than continue on to SBTC. Our service area starts in Yucaipa and ends in Montclair—it used to take four hours to complete this one-way trip—Freeway Express changes have cut the time in half. From SBTC we will have Freeway Express routes traveling East, West, North and South. Proposed implementation will occur in January 2017. As part of Title VI, there is a series of five public outreach meetings planned. Chair Lilburn suggested more interaction with the cities affected by changes to the Service Plan.

Marketing Director Wendy Williams presented the Marketing Plan for discussion, highlighting Key Performance Indicators. Despite a 91% public awareness factor, a 76% positive public opinion, and an 80% customer satisfaction rating, ridership is negative 11%. However, sbX ridership is up 26%. There will be a series of public outreach efforts relating to the West Valley Corridor Connector project. Chair Lilburn asked whether we maintain contact with sbX-affected businesses. Marketing does maintain contact, and has been in communication with hotels along the route, encouraging them to promote the line. We have surpassed 1,000,000 sbX trips. Advertising revenue is up 23%. We have WiFi on sbX buses, and on Freeway Express buses, and we know that it is used and appreciated.

The Committee directed this item be moved to the Board without recommendation by Committee as a quorum was not present.

4. Receive and Forward to Board of Directors, Progress Update, West Valley Connector Project

This item was pulled from the agenda.

F. REMARKS AND ANNOUNCEMENTS

There were no remarks or announcements.

G. ADJOURNMENT

The Plans & Programs Committee meeting adjourned at 3:18 p.m. The next Committee Meeting will be posted at Omnitrans and on the Omnitrans website.

Prepared by:

Christine Vega, Administrative Secretary

ITEM # _____ E1 _____

**PLANS AND PROGRAMS COMMITTEE
MINUTES
DECEMBER 8, 2015**

A. CALL TO ORDER

The Plans & Programs Committee Meeting was called to order by Committee Chair Penny Lilburn at 1:02 p.m., December 8, 2015.

Committee Members Present

Council Member Penny Lilburn, City of Highland – Committee Chair
Council Member Dick Riddell, City of Yucaipa
Mayor Pro Tem Sylvia Robles, City of Grand Terrace
Mayor Pro Tem Sam Spagnolo, City of Rancho Cucamonga
Council Member Alan Wapner, City of Ontario – via Teleconference
Mayor Dennis Yates, City of Chino

Committee Members Not Present

Council Member Ron Dailey, City of Loma Linda
Supervisor Janice Rutherford, County of San Bernardino

Others Present

Gerard Lumabas, PE, Parsons Transportation Group, Inc.

OmniTrans Administrative Staff Present

P. Scott Graham, CEO/General Manager
Diane Caldera, Director of Operations
Jack Dooley, Director of Maintenance
Marge Ewing, Director of Human Resources/Safety & Regulatory Compliance
Samuel Gibbs, Director of Internal Audit
Jennifer Sims, Director of Procurement
Wendy Williams, Director of Marketing and Planning
Jeremiah Bryant, Service Planning Manager
Terry Morocco, Safety & Regulatory Compliance Specialist
Victor Cuate, Scheduling Analyst
Vicki Dennett, Executive Assistant to the CEO/General Manager

B. ANNOUNCEMENTS/PRESENTATIONS

There were no announcements.

C. COMMUNICATION FROM THE PUBLIC

There were no comments from the public.

D. POSSIBLE CONFLICT OF INTEREST ISSUES

There were no conflicts of interest issues identified.

E. DISCUSSION ITEMS

1. Approve Plans & Programs Committee Minutes – August 10, 2015

M/S (Yates/Spagnolo) that approved the minutes of August 10, 2015. Motion was approved unanimously.

2. Recommend to Board of Directors, Cooperative Service Agreement with Riverside Transit Agency

Service Planning Manager Jeremiah Bryant presented this item, and discussed the four significant changes from 2008:

1. Explicitly adds Veteran Fares to the list of eligible transfer passes between the two agencies;
2. Adds the Military Veteran ID accepted by each transit agency to the other transit agency's acceptable ID list;
3. Eliminates the contractual language that could require customers to pay an equalizing fare differential; and
4. Allows Omnitrans pass holders to transfer to RTA's CommuterLink freeway express routes by paying only the premium portion of the CommuterLink fare.

M/S (Yates/Spagnolo) that recommended to Board of Directors to authorize the CEO/General Manager to sign the Interagency Service Agreement between Omnitrans and the Riverside Transit Agency (RTA). Motion was approved unanimously.

3. Recommend to Board of Directors, Mutual Aid Agreements with Victor Valley Transit Agency (VVTA) and Mountain Transit

Service Planning Manager Jeremiah Bryant presented this item, which resulted from SANBAG's 2014 transit efficiency study.

These MOU's will establish a mutual aid framework that provides the mechanism for Omnitrans to offer and bill for aid provided upon request to neighboring transit agencies in the event of accidents, incidents, mechanical issues or similar occurrences. Additionally, if the connecting roads are closed by fire, snow or for other reasons, Omnitrans agrees to help collect riders for VVTA and Mountain Transit, the anticipated collection site identified as the San Bernardino Transit Center.

M/S (Yates/Riddell) to recommend the Board of Directors authorize the CEO/General Manager to sign the Mutual Aid Memorandum of Understanding between Omnitrans and Victor Valley Transit Agency (VVTa); and recommend the Board of Directors authorize the CEO/General Manager to sign the Mutual Aid Memorandum of Understanding between Omnitrans and Mountain Transit. Motion was approved unanimously.

4. Receive and File American Bus Benchmarking Group Customer Satisfaction Survey of Omnitrans

Service Planning Manager Jeremiah Bryant discussed the results of the survey, highlighting the key findings:

- 80.4% overall satisfaction rating.
- Customer satisfaction with availability of services has moved from below average to above average.
- Customer satisfaction has fallen regarding convenience of paying for the fare following the September 2014 fare increase.
- Omnitrans consistently benchmarks as the lowest-rated agency on perceived safety and security at bus stops. Omnitrans looks forward to the 2016 survey, which should reflect the increased focus on safety and security at the San Bernardino Transit Center, Omnitrans' single busiest bus stop.
- Improved travel time has moved Omnitrans from a below average score to an above average score.

The Committee expressed interest and concern about Omnitrans ranking lowest on the 'perceived safety and security at bus stops' and inquired about what's creating the perception. Is it crime, traffic, safety inside the bus, and which cities were the respondents referring to as negatively on the issue?

Service Planning Manager Bryant explained that the details on where and why safety and security is perceived as negative is not something that can be gleaned from the survey taken, but it is something that Omnitrans can research. He added that with the opening of the San Bernardino Transit Center, the results may be quite different next year.

The Committee received and filed the presentation highlighting the results of the American Bus Benchmarking Group (ABBG) Customer Satisfaction Survey of Omnitrans, and recommended that this matter be researched further and be referred to the Operations & Safety Committee.

5. Receive and file sbX Customer Satisfaction Intercept Survey

Service Planning Manager Jeremiah Bryant discussed this survey, completed by Scheduling Analyst Victor Cuate. Member Yates suggested surveying businesses along the corridor in another year to see how sbX has affected their businesses. Jeremiah said such a survey is scheduled for late in 2016. WiFi on board is never going to give the level of satisfaction that a stationary connection will, but we will continue to try to

improve. Member Robles asked for a copy of the sbX Systemwide Plan which Jeremiah will provide.

The Committee received and filed the presentation highlighting the results of a September 2015 Omnitrans Customer Intercept Survey conducted on sbX.

6. Receive and File Project Update – West Valley Connector Corridor.

Parsons Project Manager Gerard Lumabas presented this item. He reviewed project background, and the three components comprising the project. Mr. Lumabas briefly discussed the tasks to be accomplished over the next 18 months, during the Architectural, Engineering and Final Design phase:

1. Conceptual design of corridor next steps;
2. Complete environmental documentation and clearance (NEPA/CEQA);
3. Develop financing plan;
4. Complete final design and prepare bid package for construction; and
5. Update Omnitrans' long range BRT Systemwide Plan.

The Committee received and filed a Project Update on the Architectural, Engineering and Final Design phase of the West Valley Connector Corridor rapid transit project.

7. Set the Next Plans and Programs Committee Meeting.

As the proposed date of March 8, 2016 for the next Plans and Programs Committee meeting conflicts with the National League of Cities Council meeting, staff will poll members for a different date in March.

F. REMARKS AND ANNOUNCEMENTS

There were no remarks or announcements.

G. ADJOURNMENT

The Plans & Programs Committee meeting adjourned at 1:58 p.m. The next Committee Meeting will be posted at Omnitrans and on the Omnitrans website.

Prepared by:

Christine Vega, Administrative Secretary

ITEM # E4

DATE: September 9, 2016

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

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Andres Ramirez, Program Manager

**SUBJECT: CONSTRUCTION PROGRESS REPORT NO. 49 THROUGH
JULY 31, 2016 – sbX E STREET CORRIDOR BRT PROJECT**

FORM MOTION

Receive and file Construction Progress Report No. 49 for the sbX E Street Corridor BRT Project through July 31, 2016.

This item was reviewed by the Administrative and Finance Committee at its August 11, 2016, meeting, and recommended for receipt and file.

BACKGROUND

This is Construction Progress Report No. 49 for the sbX E Street Corridor Project.

CONCLUSION

Receive and file Construction Progress Report No.49 for the sbX E Street Corridor BRT Project through July 31, 2016.

PSG:AR

Attachment

**sbX E Street Corridor
Bus Rapid Transit (BRT) Project
Construction Progress Report No. 49**

July 31, 2016

Prepared By:

**Omnitrans
Integrated Project Management Office**

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

Contractor Contract No.: IPMO11-5

Omnitrans Program Manager: Andres Ramirez



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

I. PROJECT STATUS SUMMARY

A. Project Description

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

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

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

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

B. Summary Status Update

E Street Corridor:

10th to Highland:

- Good progress continues. Concrete work complete.
- East Side of Road
 - Base paving complete.
- West Side of Road
 - Grind and demo complete.
 - Cement treatment started.
- Final Completion Date is September 8, 2016.



Grind and compaction on E Street



Repaving on E Street



Grinding machine



Repaving machine

PA System:

- Contract awarded June 1 by Board of Directors.
- Contract being executed.

Traffic Signal Synchronization:

- Final Acceptance in progress with the City of San Bernardino.

Vehicle Maintenance Facility:

Contract Closeout

- As-builts being worked on by STV.
- Final acceptance to be issued.

Completion of Work Removed from Contract

- Solicitation has been prepared and is going to Board on August 3, 2015.
- Award planned for September 30 Board.
- Completion projected for February 2017.

II. PROJECT SCHEDULE

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

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

III. SAFETY

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

	Through June 2016
E Street Corridor	
Corridor Construction including final Work	425,441
10 th to Highland	15,297
PA System	0
Vehicle Maintenance Facility	64,436
Total	505,174

V. PROJECT BUDGET AND COST

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

Total Project Budget Summary Budget as of June 30, 2016

Approved Budget	\$191,706,000
Cost to Date	\$183,278,791
Estimate to Complete	
Corridor Project	\$ 2,507,086
10 th to Highland	\$ 2,991,918
Estimate at Completion	\$188,777,795

Budget By Contract Packages 30-Jun-2016								(Contract Award + Approved Changes)		(Approved Current Budget- Committed)	Forecast		
											Potential Uses of Contingency		
	PCGA Budget	Approved Current Budget	Authorized for Expenditure	Expended to Date	% of Approved Current Budget	Contracts Awarded	Approved Changes	Committed	Expenditure Authorization Remaining	Remaining Contingency	Pending Commitments/ Potential Changes	Trends/Risks	Estimate At Completion
BRT Construction													
Griffith/Comet JV	90,780,000	84,637,000	87,760,263	81,238,395	96.2%	64,937,853	16,365,742	81,303,595	6,456,668	3,333,405	-	-	81,303,595
Art			68,000	68,000		68,000	-	68,000	-	(68,000)	-	-	68,000
Other Direct Payments			48,401	57,357		57,357	-	57,357	(8,956)	(57,357)	-	-	57,357
Delineators				70,991		89,943	(18,952)	70,991	(70,991)	(70,991)	-	-	70,991
PA System				-		563,875	-	563,875	(563,875)	(563,875)	56,388	-	620,263
Miscellaneous Work				-		17,500	-	17,500	(17,500)	(17,500)	100,000	125,000	242,500
BRT Design													
Parsons	19,193,400	17,849,400	18,097,876	19,028,955	107.0%	16,464,092	3,725,637	20,189,729	(2,091,853)	(2,340,329)	(1,334,545)	-	18,855,185
PA System				67,500		83,000	-	83,000	(83,000)	(83,000)	8,300	-	91,300
Miscellaneous Work				-		-	-	-	-	-	-	-	-
VMF Construction - USS Cal Builders	5,370,000	8,131,000	14,498,152	14,539,965	178.8%	10,579,786	3,955,349	14,535,135	(36,983)	(6,404,135)	750,000	-	15,285,135
VMF Design													
STV	1,007,600	1,007,600	1,418,132	1,865,978	187.0%	951,029	1,048,727	1,999,756	(581,624)	(992,156)	-	-	1,999,756
Carlin Environmental			27,800	18,380		10,000	9,800	19,800	8,000	(19,800)	-	-	19,800
Vehicles Design & Manufacturing-N.F.	16,628,000	16,628,000	15,978,093	15,211,154	92.5%	15,483,572	(272,418)	15,211,154	766,939	1,416,846	-	-	15,211,154
Other Vehicle Equipment			318,853	173,484		318,853	(145,369)	173,484	145,369	(173,484)	-	-	173,484
ROW Acquisition Services-SANBAG	6,532,000	10,357,000	11,738,400	11,416,608	110.2%	10,971,135	445,473	11,416,608	321,792	(1,059,608)	-	-	11,416,608
3rd Party Utilities Design & Reloc.		1,003,000	1,157,223	1,174,205	117.1%	1,174,205	-	1,174,205	(16,982)	(171,205)	50,000	-	1,224,205
Project Admin. And Management													
Jacobs	6,638,000	6,632,000	11,852,647	12,969,303	195.6%	3,898,769	9,070,534	12,969,303	(1,116,656)	(6,337,303)	-	-	12,969,303
Other													
IPMO	17,624,000	15,012,450	14,722,701	14,913,008	99.3%	15,172,701	(259,693)	14,913,008	(190,307)	99,442	-	-	14,913,008
Insurance	1,113,000	1,112,000	500,000	-	0.0%	500,000	(500,000)	-	500,000	1,112,000	-	-	-
Legal-BB&K, County	2,525,450	1,000,000	1,000,000	374,138	37.4%	1,000,000	(527,136)	472,864	527,136	527,136	-	-	472,864
In Kind Contributions	8,080,550	8,080,550	8,080,550	8,401,239	104.0%	8,401,239	-	8,401,239	(320,689)	(320,689)	-	-	8,401,239
Survey	1,464,000	1,463,000	464,000	-	0.0%	25,000	(25,000)	-	464,000	1,463,000	-	-	-
Start-Up	720,000	720,000	700,000	-	0.0%	-	-	-	700,000	720,000	700,000	-	700,000
Sub-Total	177,676,000	173,633,000	188,431,091	181,588,659	104.6%	150,767,909	32,872,694	183,640,602	4,790,489	(10,007,602)	330,143	125,000	184,095,745
Unallocated Contingency	14,030,000	18,073,000	4,335,346					10,007,602		8,065,398			7,610,255
10th to Highland Projected Costs			4,606,687	1,690,132	36.7%	3,901,000	96,863	3,997,863	608,824	(3,997,863)	634,187	50,000	4,682,050
Remaining Unallocated Contingency													2,928,205
Total	191,706,000	191,706,000	188,702,432	183,278,791	95.6%								191,706,000

IPMO/sbX Project Cost Report										
Period Ended 30-Jun-2016										
Description	Current Budget	Approved Current Budget	Expenditures		Remaining Budget	Committed		Estimate to Complete	Estimate at Completion	Budget Forecast Variance
			\$	%			%			
BRT Construction	\$ 84,637,000	\$ 84,637,000	\$ 81,434,742	96.2%	3,202,258	\$ 82,081,317	97.0%	\$ 281,388	\$ 82,362,705	\$ 2,274,295
Vehicle Maintenance Facility (VMF) Construction	\$ 8,131,000	\$ 8,131,000	\$ 14,539,965	178.8%	(6,408,965)	\$ 14,535,135	178.8%	\$ 750,000	\$ 15,285,135	\$ (7,154,135)
Vehicles - Design & Manufacturing	\$ 16,628,000	\$ 16,628,000	\$ 15,384,638	92.5%	1,243,362	\$ 15,384,638	92.5%	\$ -	\$ 15,384,638	\$ 1,243,362
ROW Acquisition Services	\$ 10,357,000	\$ 10,357,000	\$ 11,416,608	110.2%	(1,059,608)	\$ 11,416,608	110.2%	\$ -	\$ 11,416,608	\$ (1,059,608)
3rd Party Utilities Design & Relocation	\$ 1,003,000	\$ 1,003,000	\$ 1,174,205	117.1%	(171,205)	\$ 1,174,205	117.1%	\$ 50,000	\$ 1,224,205	\$ (221,205)
BRT Design	\$ 17,849,400	\$ 17,849,400	\$ 19,096,455	107.0%	(1,247,055)	\$ 20,272,729	113.6%	\$ (1,326,245)	\$ 18,946,485	\$ (1,097,085)
VMF Design	\$ 1,007,600	\$ 1,007,600	\$ 1,884,358	187.0%	(876,758)	\$ 2,019,556	200.4%	\$ -	\$ 2,019,556	\$ (1,011,956)
Other Professional, Technical & Management Services	\$ 34,020,000	\$ 34,020,000	\$ 36,657,688	107.8%	(2,637,688)	\$ 36,756,414	108.0%	\$ 700,000	\$ 37,456,414	\$ (3,436,414)
Allocated Contingency (Construction Contract)	\$ -	\$ -			-	\$ -	0.0%	\$ -	\$ -	\$ -
SUB-TOTAL	\$ 173,633,000	\$ 173,633,000	\$ 181,588,659	104.6%	(7,955,659)	\$ 183,640,602	105.8%	455,143	184,095,745	(10,462,745)
Unallocated Contingency	\$ 18,073,000	\$ 18,073,000	\$ -		18,073,000	\$ -	0.0%	\$ -	\$ -	\$ 18,073,000
10th to Highland	\$ -	\$ 4,682,050	\$ 1,690,132	36.1%	2,991,918	\$ 3,901,000	83.3%	\$ 2,991,918	\$ 4,682,050	\$ -
TOTAL	\$ 191,706,000	\$ 191,706,000	\$ 183,278,791	95.6%	\$ 13,109,259	\$ 187,541,602	97.8%	\$ 3,447,061	\$ 188,777,795	\$ 7,610,255

ITEM # _____ E5 _____

DATE: September 7, 2016

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

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Samuel Gibbs, Director of Internal Audit Services

**SUBJECT: SUMMARY OF RISK ASSESSMENT RESULTS AND
FISCAL YEAR 2017 INTERNAL AUDIT WORKPLAN**

FORM MOTION

Receive and file the results from the risk assessment and the FY 2017 Internal Audit Workplan.

This item was reviewed by the Administrative & Finance Committee at its August 11, 2016, meeting, and recommended to the Board of Directors for receipt and file.

BACKGROUND

The Department of Internal Audit Services was approved by the Omnitrans Board of Directors on January 9, 2008. Internal Audit Services has been providing services to Omnitrans since April 2008. One of the responsibilities assigned to the Director of Internal Audit Services is to conduct a risk assessment of the Agency annually and develop a workplan which includes audit engagements and activities for mitigation of risk.

ANALYSIS

Internal Audit Services helps Omnitrans accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes. The workplan outlines the audit activities to mitigate the potential risk identified by the assessment and summary of the interviews. Mitigation will consist of a mixture of audit engagements, strengthening of internal controls, and an evaluation of policies and procedures.

PSG:SG



Omnitrans Department of Internal Audit Services

Internal Audit Report 15-06

Risk Assessment and FY 2017 Workplan

Auditor Name: Samuel Gibbs, PhD

Audit Date: June 1, 2016

Risk Assessment
July 2016

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INTERNAL AUDIT ATTRIBUTES

Purpose

Mission

Omnitrans established the Department of Internal Audit Services (DIAS) to strengthen internal controls and to promote the economy, efficiency and effectiveness of Omnitrans operations. The mission of the DIAS is to provide independent, objective assurances of Omnitrans' operations. The DIAS will help Omnitrans accomplish its objectives by bringing a systematic, disciplined approach to evaluating and improving the effectiveness of risk management, controls, and the governance processes. The DIAS shall carry out independent and objective audits and reviews to accomplish its mission.

Goals and Objectives

DIAS is an internal service organization which assists Omnitrans management in ensuring:

- Omnitrans operates in accordance with Omnitrans procedures and applicable laws and regulations.
- Risks are appropriately identified and managed.
- Programs, plans and objectives are achieved.
- Adequate and effective systems of internal controls are in place.
- Important financial, managerial and operating information is accurate, reliable, and timely.
- Omnitrans' contract and contract change order audits are conducted in a timely manner.
- Quality and continuous improvement are fostered in Omnitrans' control process.
- Significant legislative or regulatory issues impacting Omnitrans are recognized and addressed appropriately.
- Omnitrans' assets and resources are adequately safeguarded, and Omnitrans' operations are managed economically, efficiently and effectively.

DIAS participates and cooperates with management to ensure that Omnitrans successfully achieves its mission.

Organizational, Independence, Structure, and Resources

DIAS is given complete independence by Omnitrans' executive management in using its resources, in selecting an area to be audited and the methodology to be used, and in determining the conclusions and recommendations resulting from its work. The Director of DIAS reports directly to the Chief Executive Officer/General Manager with a dotted line to the Administrative and Finance Committee of the Board of Directors.

DIAS shall submit written audit reports to the CEO/General Manager, and to the Board of Director's Administrative and Finance Committee, as needed.

All Omnitrans departments, programs, functions, systems, contracts and activities are subject to audits by DIAS. DIAS shall initiate audits activities based on assessed risk, legislative mandates and regulations, and in the response to requests from Omnitrans Board of Directors, CEO/General Manager, and department directors. DIAS auditors and staff shall have complete and unrestrictive access to all books, records, documents, reports, plans, contracts, and other relevant materials, as well as to all Omnitrans personnel and its third party contractors. Omnitrans management and staff shall cooperate fully with DIAS auditors during discharge of their duties, to include prompt reply to DIAS audit reports findings and recommendations, in accordance with Omnitrans procedures for audit resolution and follow-up.

RISK ASSESSMENT

Standards of Audit Practices

DIAS auditors, in conducting this risk assessment, adhered to the professional standards set forth in the Government Audit Standards promulgated by the Comptroller of the United States, and the International Institute of Internal Auditors (IIA), (e.g. *Standards for Professional Practice*).

What is Risk?

Risk can be defined as the combination of the probability of an event and its consequences. In simple terms, risk can be seen as a combination of the chance that something may happen and the degree of damage or loss that may result if it does occur.

What is Risk Management?

Risk management is the process of recognizing risk and developing methods to both minimize and manage the risk. This approach requires the development of a method to identify, prioritize, treat (deal with), control and monitor risk exposures. In risk management, the process is followed where the risks are assessed against the likelihood (chance) of them occurring and the severity or amount of loss or damage (impact) which may result if they do happen.

The annual internal audit risk assessment is intended to demonstrate:

- The breadth and depth of audit activities addressing financial, operational, strategic, hazards, and compliance of the Agency in relationship to the associated risk;
- Accountability for our resources; and
- The progress in our efforts to continually improve the Agency's Internal Audit program.

It is the intent to convey a current sense of the Agency's internal control environment and the extent to which controls are being assessed by regular audit activities, addressed proactively through advisory services, or investigated as a result of issues raised.

Frequency Performed

Risk assessments shall be performed annually, or as directed by the Administrative and Finance Committee of the Board of Directors, or the CEO/General Manager. Audit engagements will be conducted according to the potential for weakened internal control or increased risk.

Process and Methodology

The process will involve consideration of all potential risks facing Omnitrans in pursuing its strategies with risks broken down into appropriate headings (e.g. strategic, operational, financial, human resources, legal/regulatory and technological), and identified with the operating departments.

All risks should be clearly defined together with the controls that currently exist to manage them. An assessment of the adequacy of the present control system will avoid duplication of resources because several of the identified risks may already prove to be effectively controlled.

Risk will be determined by performing the following evaluations:

- Interview of the director and all key personnel in each operating department.
- A recap of all previous internal and external audits over the last 24 months.
- The use of self-assessment risk review list of questions provided by the FTA specifically designed to address risk in transit.
- A review of the Agency's strategic objectives.

It is important that the internal systems and procedures in place are adequate to manage the identified risk. Where control weaknesses are identified, these should be noted so that the proposed action is taken to remedy such weaknesses.

Internal Audit Services will undertake the identification of risks. Input will be obtained from the individual operating departments to ensure that all risks have been taken into account, and important risk and control issues have not been overlooked.

RISK DOMAINS

The risks facing the Agency today can be classified into domains that Enterprise Risk Management (ERM) recognizes:

Strategic:

The Strategic domain is risk related to the ability of the organization to grow and expand. Examples include customer relations, ridership, planned growth, new projects, and any change in governance structure as a result of planned growth. This process includes an evaluation of the alignment of the Agency's strategies to the actual activities of the Agency; additionally, how will the strategies and activities be measured? The 2017-2020 Strategic Plan has been tied to the Agency's Management plan. The FY 2017 Management Plan provides a set of actions to align the efforts of the Omnitrans' Senior Leadership Team in its decision-making and execution of strategies to the multi-faceted needs and desires of the region. It is an example of the type of strategic business actions used to improve business operations. This involves evaluating products and services, examining labor performance, procurement costs, delivery processes and customer satisfaction. The CEO/General Manager and the Senior Leadership Team (SLT) interpreted the 4-year Strategic Plan into the 12-month Management Plan for implementation in FY2017. It serves as the basis for evaluation of progress and performance on the Strategic Plan in FY 2017. The Management Plan also aligns with the agency's Short Range Transit Plan for Fiscal Years 2015 – 2020 (*Omniconnects*).

Operational:

The Operational domain (the term operation in this case is not referring to vehicle operations) is derived from the organization's core business, including its systems, practices, policies, and procedures. Examples include procurement and planning policies. The Senior Leadership Team has developed a dashboard that includes strategic initiatives taken from the Fiscal Year 2017 Management Plan. The strategic initiatives will be reviewed monthly in the Senior Leadership Team Meeting. Progress of the strategic initiatives will be reported to the Board of Directors quarterly.

Financial:

The Financial domain deals with risk related to the organization's ability to acquire, raise, or access capital, as well as the costs associated with the transfer of risk (insurance and the use of consultants). Examples might include federal, state, and local funding. The Financial domain also includes the activities associated with securing funds that are passed through the Agency to a sub-recipient. Additionally, the Agency has to determine the risk appetite versus the potential savings for all forms of insurance. Finance has to determine and maintain the right risk management strategy for a public agency while optimizing the potential savings. Staff continues to look for cost cutting opportunities by evaluating all aspects of administration and operations.

Risk Assessment
July 2016

The objective as outlined in the annual management plan is to increase fare box recovery by reducing operating cost without negatively impacting service and operations.

Human Resources:

The Human Resources domain relates to the risk related to recruiting, retaining and managing the workforce. Examples include workers' compensation, FMLA, employee turnover, absenteeism, and discrimination. The Agency has placed emphasis on succession planning, skills inventory, training, and development to improve the internal applicant base. The average age of the Agency's workforce is 52. Human Resources has adopted a plan to address the retirement of key personnel. The ultimate goal is to develop new innovative programs to attract and retain quality employees. Success will be measured by the Agency's ability to keep service on the street and reduce lost service and unplanned overtime.

Legal/Regulatory:

The Legal/Regulatory domain is risk related to transit statutory and regulatory compliance. Examples include the changes in internal policies as a result of the changes in the FTA Circular 4220.1F, and adherence to changes in reporting filtered down to the Agency from the FTA. The Agency presently receives direction from the county's legal staff and Burke, Williams, and Sorensen (B,W&S). Attention will be paid to change in the Agency's JPA as well as federal, state, and local regulations requiring changes to the Agency's operating policies. The FTA has placed emphasis on Buy America, Procurement best practices, construction project management, and management of grants three years or older. The Agency will make a transition from County Counsel to either contract or in-house counsel in FY 2017. On the horizon is the need for legal representation for the inclusion of rail operations.

Technological:

The Technology domain is risk associated with equipment, devices, and reporting systems. Examples include new fare box recovery equipment and the continued integration of the Enterprise Resource Planning (ERP) system. The Department of Internal Audit Services will assess additional vulnerability associated with a complex information technology department. The Internal Audit Department will continue to assess the institutionalization of the ERP system. A strategy is being considered that will address required change management to address SAP concerns. This fiscal year Internal Audit will work with the Director of Information Technology to develop a Disaster Recovery Plan (DRP) and a Business Continuity Plan (BCP). The DRP and BCP are expensive to implement, but are very necessary. The goal is to ensure the Agency has a process for continued services in a crisis. Technology optimization is also strategically important. The Optimization of technologies is to increase efficiencies and improve services to internal and external customers.

Scheduled Audit Engagements for FY 2017

Risk can be mitigated by conducting audit engagements or involvement in the following areas:

- Sub-recipient grants oversight
- Succession Planning, including performance management and employee development, and the workforce development program opportunities
- Disaster Recovery Plan
- Business Continuity Plan
- Grant Process Management
- San Bernardino Transit Center (SBTC) continued monitoring, safety and security
- Annual Risk Assessment for FY2018
- Procurement Policies and Procedures
- Buy America Pre-Award and Post-Delivery Audits
- Joint Powers Agreement (JPA) changes to Omnitrans
- Consolidated Transportation Service Agency (CTSA)
- Capital Inventory Valuation (being added to NTD reporting in FY 2017)

Strategic

Future Funding and Growth - The Agency has to determine strategies for future funding and growth. The Agency is addressing methods for cost containment/reductions to optimize current funding to maximize efficiencies. For example, the installation of pipeline CNG stations, and the continued strategy to convert all new Access vehicles to CNG. Staff will continue to look for ways to reduce cost while providing quality service. Some examples of both cost saving and environmental initiatives are: monitoring the electrical usage, water conservation, drought tolerant landscaping, and solar at some of the facilities. The goal is to increase fare box recovery by reducing operating costs without negatively impacting our services and operations. This approach optimizes funding opportunities while maintaining fiscal stewardship. Additionally, changes to the Agency's Joint Powers Agreement (JPA) will allow for the exploration of a transportation tax.

Operational

Service Optimization - The development of strategies to address the optimization of service levels during a recovering or static economy. Omnitrans will be introducing additional express services, as well as looking at opportunities for public-private involvement in circulator routes. Service optimization includes the continued high level of service at the SBTC, the submission of the Small Starts grant for the West Valley Connector Corridor (WVCC), and continued assessment of the current routes. As the Agency addresses the decline in ridership that is being experienced by transit agencies across the country; staff will look for incorporating alternative modes of connectivity such as the Uber, Lyft, and other first mile initiatives.

Buy America Pre Award and Post Delivery Audits - The Agency has a fixed fleet replacement strategy that outlines the replacement of 15 buses each year (as funding availability allows). Omnitrans has selected New Flyer of America Inc. in Winnipeg, Canada and Crookston, MN as the preferred manufacturer to manufacture fifteen (15) 40' CNG buses. Federal Transit Administration (FTA) regulations require that Omnitrans complete a pre-award audit of the bus manufacturer to determine if they comply with the Buy America requirements outlined in 49 CFR Part 661 and 49 CFR Part 663. Post-delivery audits are also required to ensure compliance with the FTA Buy America requirements. Because of funding availability the delivery anticipated for the beginning of FY 2017 is thirteen (13) coaches. The thirteen (13) vehicles will be manufactured at the New Flyer of America Inc. plant in Anniston, Alabama. There will be required site visits to the Anniston plant and comprehensive reviews of the onsite inspection documentation.

Procurement System Review (PSR) - Internal Audit will work with the Procurement Department to ensure staff is staying current with FTA Procurement requirements. As changes to the FTA circular are received, staff will be trained on the most efficient way for the Agency to incorporate the changes into best practices. Procurement is working with the department directors and project managers to update the Procurement Policies to reflect best business practices and maintain the proper levels of compliance. Regular audits of the Agency's Procurement Policies will ensure adequate compliance on the FTA future Procurement System Reviews (PSR).

Contract Administration - DIAS will conduct regular random audits of the administration of active contracts. Additionally, there will be reviews of the change order process and the resolutions to submitted change orders. There are safeguards added to SAP to ensure that the internal controls are in place to monitor the approval process and the release of proceeds associated with contracts. Manual backups are also implemented to provide a work around for SAP, when needed. When manual backups are used, the expenditures will not exceed the contract amount. The results of the 2016 Triennial Review identified the need for follow-up with the process for performing cost and price analysis for every procurement action including contract modifications. Regular reviews of this process will ensure the training conducted is yielding the desired results.

Site Visit I St. and Feron St. - Internal Audit will conduct follow-up reviews and visits to assess proper monitoring of the safety and security and drug and alcohol compliance audits for the contract provider MV Transportation. Consideration will be given to the relocation of Feron St. to an Agency-owned site, since it is currently located on leased property.

Bus Ride - Take a monthly bus ride and monitor rider perception, customer service, driver behavior, and the Agency's image. The results from the bus rides are fed into an ad hoc group, which is tasked with making the necessary adjustments. The ad hoc group will continue to meet regularly to monitor results, conduct comparison audits on the reliability of the Trapeze system, adjust TransitMaster data, and validate the data for reporting to the National Transit Database (NTD). Each week a member of the Senior Leadership Team takes a bus ride to assess our system through the eyes of the rider (customer). These rides include a review of the condition of the coaches, customer service, and direct discussions with riders. The highlights from the rides are discussed at that week's Senior Leadership Team Meeting, and necessary changes are implemented.

Human Resources

Communication - The communication channels deal with the strategies for disseminating information internally and externally. The Agency is obligated to communicate policy and procedures consistently across all departments, and have effective methods to ensure important information affecting all employees is communicated. Critical information must be communicated to the CEO/GM and the Board of Directors effectively and in a timely manner. Communication to external stakeholders is also critical. This communication is achieved through the website, monthly newsletter, blogs, Facebook, and public hearings. Leaders at every level of the Agency also ensure that important information is communicated to subordinates by having weekly meetings, monthly one-on-ones, and tailgate meetings in Maintenance. The Agency also holds quarterly meetings to communicate updates.

Succession Planning and Management Development - Succession planning is a strategy to recognize and promote internal growth and development at every level of the organization. The succession planning process requires full participation of each department director to "cultivate leadership", identify potential talent, provide growth opportunities, and assign tasks of increasing responsibility. Counseling, encouragement, and direction by a Director are critical to ensure

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success. The Leadership Action Program (LAP) provides a forum for employees to hone their management skills, while exploring cost saving initiative for the Agency. Other opportunities include the Disney Leadership Course, APTA leadership programs and seminars, as well as the California Transit Association's committee participation.

The FTA awarded Omnitrans a \$340,000 grant to conduct workforce development, which served as an opportunity to introduce transit to unemployed or under-employed individuals. As the result of conducting classes for 180 participants, the Agency hired 11 coach operators and two employees to work in other departments. Additionally, an internship program was implemented, which provided the opportunity for every department in the Agency to hire interns for 288 hours each. The program allowed for undergraduate and graduate interns to be exposed to transit, as they provide support to those departments. Progress reports are maintained on each intern and a lunch meeting with the project team is conducted monthly. Presently there are eighteen (18) interns (which includes two interns paid for by a local community church).

Work Schedules and Flex - Conduct biannual follow-up reviews of individual work schedules by department. Reviews will address the following questions: 1) Are all employees working within core hours as defined by the department director? 2) Are the management confidential and represented employees working within the policies for each designation? This process will consist of a full audit annually and quarterly follow ups.

Employee Recreation Club (ERC) - Conduct ongoing random and routine audits on the ERC activities and financial management process. Internal Audit acts as a check and balance for the ERC, ensuring the activities are conducted in accordance to the by-laws. The events offered by the ERC must be presented to all employees in a fair transparent manner. The minutes from the ERC meeting as well as all upcoming events are posted on the ERC communication board in the Operation's break room.

Financial

Economic Conditions/Budgeting - Challenging economic conditions are always a genesis for fraudulent or unethical practices. In support of the required fraud examinations during our external audit, the DIAS will continue with the fraud detection element to every internal audit engagement. The Agency has strong internal controls in place and is always willing to address any weakened controls that are discovered. In a review of processes and procedures, or in normal interactions, there were no discoveries of fraudulent activities. It is a requirement that any indication of fraudulent activities, or activities that might cause the possibility of financial misstatement, are reported to the governance body immediately.

Transaction Flow Review - Select random transactions in accounts payable, accounts receivable, receiving, and procurement and follow the flow from beginning to end. The review will include monitoring who has access to that area, what the lines of authority are, and the process. Additionally, reviews of the payment process will be included in the follow up. The Agency has a good reputation for paying invoices on time; that process will require reviews to ensure best practices continue.

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Cycle Count/Inventory Control - A weekly assessment and recap of the previous week's cycle count will be performed. The normal full review will be conducted on an annual basis. Support is provided on a regular basis to ensure the minimum amount of deadline vehicles.

Inventory Control - A full review will be conducted annually to ensure that all processes for inventory management are being completed at both East Valley and West Valley. These processes include cycle counts Mon-Thurs., timely reconciliation, and proper reporting.

Grant Review and Update - Routine review of the grant process is needed to ensure the Agency is maximizing the funding options available. In addition, the grant process will be evaluated to ensure that all funds are drawn down as soon as the funds are available to the Agency. For example, the Treasury Manager is requesting federal reimbursement as soon as the Agency pays the invoice, and there is not more than 72 hours between when invoices are paid, and reimbursements are drawn down from the Transportation Electronic Award and Management (TRAMS) system. Follow up on FTA requirement for timely closeout of grants. The FTA considers it to be a best practice to have grants closed out after three years.

Grant Process - Construction grants such as the sbX project and the VMF project are subject to Improper Payments Elimination and Recovery Act (IPERA) reviews. The FTA has placed emphasis on grantees closing out grants that are over three years old. Internal Audit will work with the Treasury Manager to stay current on grant administration. Additionally, the Internal Auditor will review the execution of the quarterly FTA 1512 reporting requirements. All recipients of the American Recovery and Reinvestment Act (ARRA) grant funding are required to submit quarterly reports on progress in implementing their grants pursuant to the requirements of Section 1512 of the Recovery Act. Recipients submit reports through a central government wide reporting portal provided by the Recovery Act Accountability and Transparency Board, in coordination with the Office of Management and Budget (OMB). The reporting is done by the Treasury Manager and reviewed by another party assigned to provide oversight. In FY 2016, Omnitrans was in compliance with all ARRA and IPERA requirements. This review will be conducted again for FY 2017 in the fall of 2016. Grants are subject to IPERA review up to 24 months after the grant has been closed out.

Cash Accountability - Internal Audit and the Finance staff will conduct both quarterly and random audits of the cash collection and counting process for the fareboxes. The counting and deposit of these funds are performed by an outside vendor. Omnitrans' staff can monitor the process by matching the GFI reports to the bank deposit slips.

Petty Cash - Conduct biannual reviews of all petty cash funds. Review petty cash funds to ensure that transactions are conducted in accordance to the Agency's policy (approved 4-10-2006 and revised 12-15-2006).

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

Technology

IT Evaluation- The proposed engagements with IT will include the monitoring of IT security such as passwords, security levels, and segregation of duties (no one IT employee should have exclusive access to all levels of the IT infrastructure).

Disaster Recovery Plan (DRP) - The Disaster Recovery Plan is the plan followed by IT to recover information processing facilities, assets, and business areas after a crisis or disaster. The components of a DRP should include:

- Goals and requirements of each plan aspect
- Recovery time objectives by specific operation
- Disaster declaration procedure
 - Who declares the disaster? (Who is the offsite backup?)
 - How will people be notified?
- System recovery plan
- Network recovery plan
- Incident management

Due to the potential of being very expensive, there are alternate approaches. There are Hot Sites- equipped with exact configuration required to recover critical applications. This is available at a moment's notice but on a first-come-first served basis; Warm Site- equipped with some equipment but usually not with large computers. This will require time to fully configure the room with the necessary equipment; and Cold Site- This is an empty room with only electrical and environmental facilities. This requires the company to obtain the necessary computing and telecommunication equipment.

Business Continuity Plan (BCP) - The Business Continuity Plan is the plan followed by the business to function while systems are not available. Plans must be in place to conduct a Business Impact Analysis (BIA), which address the recovery point objectives and the recovery time objectives. This answers the question, how much data do we need access to, and how long is the maximum tolerable time to recovery.

Information Technology (IT) - Audit to review license and security levels on the network. An additional review will be performed addressing the safeguard of confidential information. The audit will be performed to measure the effectiveness of SAP implementations. Internal Audit will look into contracting an IT auditor to conduct system reviews.

Sub-Recipient Monitoring and Review - Sub-recipients are organizations who receive FTA funds passed to them through Omnitrans, which acts as the primary grantee. In this capacity, Omnitrans' staff is responsible for providing oversight to the sub-recipient. The Finance Department has an assigned representative who does follow up with the sub-recipients using site visits, checklists, and reports. Internal Audit will also conduct random visits to ensure the quality of the sub-recipient program.

San Bernardino Transit Center (SBTC) - Omnitrans took possession as the owner and operator of the San Bernardino Transit Center (SBTC) on September 8, 2015. Design and construction was overseen by the San Bernardino Associated Governments (SANBAG). Parsons Brinckerhoff served as construction manager on behalf of SANBAG for the facility. The San Bernardino Transit Center brings together 22

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bus bays to service 10 local and two freeway express Omnitrans bus routes, a San Bernardino Express (sbX) bus rapid transit line, and buses for the Victor Valley Transit Authority and Mountain Transit. The center also accommodates private shuttles, taxis and bicycles. This multimodal facility is intended to consolidate transit operations into a single downtown site, making connections more efficient and helping to spur redevelopment and revitalization efforts in downtown San Bernardino. The center is also prepared for the arrival of commuter rail transit. Currently Metrolink service connecting Los Angeles to San Bernardino currently terminates at the Santa Fe train depot. The San Bernardino Passenger Rail Project will extend that service one mile into the city's downtown and includes a passenger station adjacent to the transit center.

A component of delivering world class service to our customers throughout the system and particularly at the SBTC is having a strong perception of cleanliness, safety, and security. The perception of clean, safe and secure is tarnished when there is visible loitering, drugs, or panhandling. Regular assessments provide findings and recommendations to strengthen the perception at the SBTC and assist staff with delivering the desired world class facility.

Fare Pass Monitoring - Continue to audit the report to ensure that the overrides for fare passes are not excessive. Coach Operators have the ability to override the issuing of fare passes when the system fails to automatically produce a pass or when they need to initiate a test pass. Operations can track the amount of fare passes overridden by Coach Operators. The report is monitored for activity outside of the normal perimeters, which signals possible abuse. Internal Audit will continue to monitor quarterly because this is an area of significant exposure for the Agency.

Environmental Initiative - The Omnitrans Mission Statement states the Agency will service our customers in an environmentally friendly manner. Omnitrans' staff is committed to researching ways we can conserve water, reduce electricity usage, continuously take advantage of low emission vehicles, and recycle and salvage our waste appropriately. To this means, the Agency reclaims a percentage of the water used for the bus wash at both facilities; we have changed landscaping to drought tolerant designs; installed electric charging stations; and are researching the use of electric buses. Additionally, we will install pipeline CNG fueling stations at both East and West Valley in FY 2017.

Reduction of Non-Revenue Vehicles- The Agency is committed to reducing the number of non-revenue vehicles as another way to reduce operating cost. Additionally, assessments are in progress to determine the best options for the use of low emission vehicles. Staff is presently looking at the electric and CNG options.

Triennial Review Follow Up – The FY 2016 Triennial Review was conducted February 16 and 17th, 2016. The period under review was 2013, 2014, 2015 FTA activities. A draft report was received on March 18, 2016 and a Final report on April 20, 2016. Responses from the draft report were provided for nine (9) areas where deficiencies were highlighted: Technical Capacity, Maintenance, Americans with Disabilities Act (ADA), Title VI, Procurement, Disadvantaged Business Enterprise (DBE), Satisfactory Continuing Control, Public Comment on Fare Increases and Major Service Reduction, Drug-Free Workplace/Drug and Alcohol. From the final report there are nine (9) elements that require a response five (5) due on 5/23/2016, three (3) due in July 2016, and one due in August 2016. There will be continued follow up on the ADA and DBE elements.

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Preparation for Rail Service- After a quantitative review, estimating annual operations and maintenance costs and taking into account additional full time employees that would be needed to manage the new Redlands Passenger Rail Project (RPRP) service, the study concluded that Omnitrans was the best fit as the managing agency of the Maintenance of Equipment and Rail Operations. On November 4, 2015, the SANBAG Board of Directors authorized its Executive Director (or designee) to begin negotiations with Omnitrans to provide Maintenance of Equipment and Rail Operations services for the Redlands Passenger Rail Project (RPRP). SANBAG is working on an agreement to solidify the relationship, which is tentatively scheduled to be brought before both the Omnitrans and SANBAG Board of Director in the fall of 2016. Recruitment for Director of Rail operations will begin in the fall of 2016.

Consolidated Transportation Service Agency (CTSA) - On December 2, 2015, the Omnitrans Board of Directors accepted the designation by SANBAG as a Consolidated Transportation Services Agency for the Valley Measure I Subarea for a five-year term. At that time, it was assumed that the transition of operations from Valley Transportation Services (VTrans) to Omnitrans would not become effective until the 2018 termination of VTrans' existing funding agreement with SANBAG. However, at its January 20, 2016 meeting, the VTrans Board took action to cease its CTSA services in the Valley area and terminate its contract with SANBAG. As a result of this action, SANBAG's obligation to provide future transfers of Measure I Valley area CTSA funds to VTrans ceases, VTrans is obligated to transfer unobligated CTSA Funds and records to SANBAG, and perform such other acts as are convenient or necessary to ensure an orderly transfer of Measure I Valley area CTSA function to Omnitrans. To ensure no loss of service to people served by the CTSA, SANBAG worked with Omnitrans to develop a funding agreement similar to the agreement SANBAG had with VTrans. The area occupied by the Planning Department in the Omnitrans administration building was vacated and VTrans staff moved on May 27, 2016. Omnitrans Human Resources staff is currently recruiting for a Director of Special Services.

Maintenance Parts Availability (SAP Tracking) - The proper on hand inventory of parts is critical for managing the amount of days a vehicle is out of service for maintenance. The SAP system is programmed to replenish parts according to velocity. The system will automatically adjust for seasonal peaks or shifts in parts' fail rates. The integrity of the inventory counts, cycle counts, and SAP system has to be monitored and adjusted for best results. The indicators for the effectiveness of the parts availability are the vehicle deadlines; how quickly buses can be repaired and returned to service.

Additional Engagements

Carry-forward audits (areas which will be addressed if time and resources allow)

This category will be dependent upon current audits that are incomplete at the end of the fiscal year end.

Other audit engagements to be complete this fiscal year if time and resources allow

Conflicts of Interest - A review will be conducted of current laws, regulations and policies and their application at the Agency.

Discipline and Termination - A review will be conducted of the discipline and termination process and compliance with applicable laws, regulations and policies.

Hiring Processes - A random review of the hiring process, and compliance with applicable laws, regulations and policies will be conducted.

Special Projects - Any activity deemed necessary by the CEO/GM or the Administrative and Finance Committee.

Follow-Up - Conduct reviews of completed audits to assess the progress and implementation of previously issued audit recommendations and management responses as required by the Professional Standards. Follow up on any material issues or deficiencies identified by internal or external engagements.

Real Estate Sale - 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) in FY 2015. 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. The RESO advertised the property to governmental agencies. The property was offered to governmental agencies for at least 60 days. The property is in escrow. The FTA has authorized the reallocation of the proceeds from the sale of the property for additional transit-related enhancements.

Summary of Audit Activities for FY 2016

Engagements	Findings, Recommendations and Outcomes	Follow-Up
Sub-Recipient Grant Oversight and Sight Visits	<p>Sub-recipients are organizations which receive FTA funds passed to them through Omnitrans, which acts as the primary grantee. In this capacity, Omnitrans' staff is responsible for providing oversight to the sub-recipients. During the period under review, Omnitrans' staff provided oversight for 16 sub-recipients. The Finance Department has an assigned representative who does follow up with the sub-recipients using site visits, checklists, and reports. Internal Audit, the Treasury Manager, and the assigned staff from Finance concluded site visits of all sub-recipients by July 31, 2015. There were no findings or recommendations noted as a result of the site visits. The site visits for this fiscal year will be completed by August 31, 2016.</p> <p>The agencies or projects that are considered sub-recipients are: City of Needles, Inland Valley Recovery Services, City of Rialto-Metrolink Expansion Project, SANBAG-San Bernardino Intermodal Transit Center, Valley Transportation Services, Central City Lutheran Mission, Community Senior Services, LLUMC Adult Day Health Services, United Way Inland Empire, City of Yucaipa-Yucaipa Transit Center-Phase II, City of Chino-Chino Transit Center Phase II, City of Fontana-Transit Stop Access Improvements, City of Highland-Transit Stop Access Improvements, SANBAG-Downtown San Bernardino Passenger Rail Project, Pomona Valley Workshop, and Victor Valley Transit Agency.</p>	Ongoing in FY 2017
Armor Transport Services	<p>Internal Audit and the Finance staff conduct both quarterly and random audits of the cash collection and counting process for the fare boxes. The cash and coin collected from the fare boxes amounts to about \$7.5 million a year. The counting and deposit of these funds are performed by an outside vendor. Omnitrans' staff can monitor the process by matching the GFI reports to the bank deposit slips. The last audit of the GFI reports to the bank deposit slips yielded a plus .6% variance on \$1,962,838. This is about an \$11,539.00 variance on \$1,962,838 worth of transactions, which was well under the +/- 3% tolerance.</p>	Ongoing in FY 2017
Employee Recreation Club (ERC)	<p>The Employee Recreation Club (ERC) provides formal recreation for the employees and family members of employees of Omnitrans and is managed and operated independently of Omnitrans. The ERC has its own officers consisting of employees/members that are voted into office for a period of two years. The sources of income for the ERC are membership dues, collected by payroll deduction and paid to the club by a check from the Finance Department. Membership dues are an initial fee of five dollars, and .25 % of the member's pay (by payroll</p>	Ongoing in FY 2017

Summary of Audit Activities for FY 2016

Engagements	Findings, Recommendations and Outcomes	Follow-Up
	<p>deduction) not to exceed \$150.00 per year. The other income source is the revenue collected from the vending machines at West Valley, East Valley, and the San Bernardino Transit Center. The ERC sponsors about a dozen trips per year. The total cash amount collected from dues and vendor revenue, which is applied to recreational activity, is in excess of \$40,000 a year. Most trips are free of charge to members; family members and non-members are required to pay full price. The last review was conducted in February, 2016 and the findings were as follows:</p> <ul style="list-style-type: none"> - All recommendations from prior audits or reviews were complied with 100%. - Elections of officers were held on September 26, 2015. Vicki Owens was elected to replace Terrence Gipson as President. - In April of 2016 the Secretary resigned and a special election was held, which elected Brenda Oliver to fill the remaining term. <p>There were no recommendations or material findings during this engagement. The full report is available upon request.</p>	
P-Card	<p>The purpose of the P-Card audit is to provide a routine follow-up for the Agency that continues to look at P-Card transactions in relationship to the policy and procedures. A semi-annual review allows the Agency to detect quickly and correct any deviations from policy. Regular and routine follow-up is a method of improving internal controls for the process. The last Formal review was January 2016; a review of the P-Card transactions is in process and will be reported on the next update. The findings from the last review are as follows:</p> <ul style="list-style-type: none"> - Andre Ramirez, who is a Director and approves his own transactions, did not realize that he needed to sign as the approver and as the cardholder. - Jennifer Sims, who is a Director and approves her own transactions, did not realize that she needed to sign as the approver and as the cardholder. <p>In both cases the unsigned documents were signed and updated.</p> <p>It is recommended that the Department Directors continue to review closely and educate subordinates when needed, on the proper use of P-Cards.</p>	Ongoing in FY 2017

Summary of Audit Activities for FY 2016

Engagements	Findings, Recommendations and Outcomes	Follow-Up
FTA Triennial	<p>The FY 2016 Triennial Review was conducted February 16 and 17th, 2016. The period under review was 2013, 2014, 2015 FTA activities. A draft report was received on March 18, 2016 and a Final report on April 20, 2016. Responses from the draft report were provided for nine (9) areas deficiencies were highlighted: Technical Capacity, Maintenance, Americans with Disabilities Act (ADA), Title VI, Procurement, Disadvantaged Business Enterprise (DBE), Satisfactory Continuing Control, Public Comment on Fare Increases and Major Service Reduction, Drug-Free Workplace/Drug and Alcohol. From the final report, there are nine (9) elements that required a response five (5) by 5/23/2016. Three (3) responses are due in July 2016, and one in September 2016. There will be continued follow up on the ADA and DBE elements. The response due in July was already sent to the FTA.</p>	September 30, 2016
Force Passes	<p>Coach Operators have the ability to override the issuing of fare passes when the system fails to automatically produce a pass and to produce a test pass. Operation staff can track the amount of fare passes overridden by Coach Operators. The report is monitored for activity outside of the normal parameters, which signals possible abuse. Internal Audit will continue to monitor quarterly because this is an area of significant exposure for the Agency. Exceptions to normal activities are monitored by Internal Audit. During the period under review there is one operator who is being monitored to determine if his or her transactions are concerning. After further review it was determined that a consistent pattern did not exist.</p>	Ongoing in FY2017

Summary of Audit Activities for FY 2016

Engagements	Findings, Recommendations and Outcomes	Follow-Up
Procurement System Review (PSR)	<p>The Federal Transit Administration (FTA) contracted the consultant Leon Snead & Company to conduct a Procurement System review (PSR) of Omnitrans.</p> <p>FTA grantees use their own procurement procedures that reflect applicable State and local laws and regulations, providing that the process ensures competitive procurement and that the procurements conform to applicable Federal law, including 49 CFR Part 18, specifically Section 18.36 and FTA Circular 4220.1F, “<i>Third Party Contracting Requirements</i>.” Grantees will maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. A PSR was conducted for August 24, 2015 and concluded on August 26, 2015. The deficiencies noted were not widespread. Eleven of the 19 contracts files reviewed had no deficiencies. Two contract files had two or more deficiencies and another six files had only one. The final report from the FTA dated 10/29/2016 indicated all deficiencies were adequately addressed and the report closed.</p> <p>Internal Audit will continue to work with the Procurement staff to ensure that ongoing training is conducted in the previously deficient areas.</p>	Randomly in FY 2017
SBTC	<p>Omnitrans took possession as the owner and operator of the San Bernardino Transit Center (SBTC) on September 8, 2015. Design and construction was overseen by the San Bernardino Associated Governments (SANBAG). Parsons Brinckerhoff served as construction manager on behalf of SANBAG for the \$25 million facility. The San Bernardino Transit Center brings together 22 bus bays to service 10 local and two freeway express Omnitrans bus routes, a San Bernardino Express (sbX) bus rapid transit line, and buses for the Victor Valley Transit Authority and Mountain Transit. The center also accommodates private shuttles, taxis and bicycles.</p> <p>A component of delivering world class service to our customers throughout the system and particularly at the SBTC is having a strong perception of cleanliness, safety, and security. The perception of clean, safe and secure is tarnished when there are visible loitering, drugs, or trashy elements. This assessment will address the findings and recommendations to strengthen the perception at the SBTC and assist staff with delivering the desired world class facility.</p>	Ongoing in FY2017

Summary of Audit Activities for FY 2016

Engagements	Findings, Recommendations and Outcomes	Follow-Up
	<p data-bbox="451 237 803 268"><u>Ramifications/Implications</u></p> <ul data-bbox="500 310 1295 489" style="list-style-type: none"> - The perception of a clean, safe, and secure facility could be a motivator for riders to increase their frequency of use of the SBTC. - It appears that the positive perception is increasing the use of transit via the SBTC for school age children. <p data-bbox="451 531 714 562"><u>Recommendation(s)</u></p> <ul data-bbox="500 604 1295 1150" style="list-style-type: none"> - The Senior Leadership Team (SLT) has been very visible at the SBTC at various times throughout the day (including early mornings and late evenings). This is very important to improving customer service and assessing customer needs. This also strengthens the attitude of employees witnessing the attention directed to ensure the facility is world class. - Continue with the weekly bus rides by the SLT. Although the focus of the weekly bus rides is system-wide, a lot of focus has been on the SBTC. - The SLT visibility at the SBTC is a wonderful way to hear directly from the customer how we can better serve them. As we learn from customers at the SBTC, this information might also be very valuable for improving customer service across the entire system. <p data-bbox="451 1192 906 1224"><u>Actions Items and Final Comments</u></p> <ul data-bbox="500 1266 1295 1873" style="list-style-type: none"> - The remedy for the bus turn-out is still pending resolution. Yellow dots have been placed strategically to guide the drivers through the turn successfully without going too far right or left. Additionally, it would be helpful when a driver is witnessed navigating the turn unsuccessfully, that Operations is notified, so the driver could receive additional training. - The Billy Goat (pavement vacuum) has been deployed and seems to be very effective in keeping the walkways free of trash and cigarette butts. - Based on feedback from drivers, the Maintenance team will adjust turning radius on coach 196 and monitor to improve this coach's ability to navigate the turnout at the SBTC. - Having the presence of a Transit Supervisor at the SBTC has been very helpful to customers. The visibility reduces incidents and the supervisor assists with directing 	

Summary of Audit Activities for FY 2016

Engagements	Findings, Recommendations and Outcomes	Follow-Up
	customers to the appropriate routes.	
Petty Cash	<p>Omnitrans created a Petty Cash Fund to allow for quick and unpredicted small purchases to be made with little or no disruption to business. According to written Policy and Procedures which were updated after the recommendations of the April 2009 audit, the Petty Cash Fund is distributed throughout the agency as follows: \$ 600.00 in Operations (East Valley); \$ 500.00 in Maintenance (East Valley); \$ 500.00 in Facility Maintenance (East Valley); \$ 200.00 in Human Resources (East Valley); \$ 100.00 in Marketing; \$ 1000.00 in Finance; and \$ 600.00 in the front desk change fund (for Marketing) in Finance. The total Petty Cash fund in the General Ledger account Number 10101 and 10102 is 3,500.00. The policy calls for the Finance department to periodically audit the Petty cash balances and to maintain a log of the audits.</p> <p>The appropriate diligence is applied to the Petty Cash process by each department and their designated custodians of the funds. These findings were a result of actual reviews conducted on each department's Petty Cash fund. There are no material findings. Since the last review the Finance department has implemented the updated procedures to reflect the proper allocations of fund by department. All departments are following the procedures as updated by Finance. All petty funds for every department are managed and administered in the East Valley offices. During this review it was determined that the procedure required further updating to reflect the changes since last review period.</p> <p><u>Finding</u></p> <ul style="list-style-type: none"> - Total variance for the five departments in the east valley centers that were reviewed was a \$0.01 shortage. - All other procedures are being followed according to the Finance procedures approved April 10, 2006 and revised on December 15, 2006. Exceptions are the amounts in each fund and the location of the funds (see recommended changes to the procedures) - The total variance between the two tills at the San Bernardino Transit Center that were reviewed was \$2.45. One of which tills did not properly refund a pass correctly. Instead of voiding the original pass and selling a new pass to the rider; the clerk exchanged passes with the rider and collected the difference between the passes. This off 	Ongoing in FY2017

Summary of Audit Activities for FY 2016

Engagements	Findings, Recommendations and Outcomes	Follow-Up
	<p>balanced the till when doing the audit because the original pass had not been sold, but in the system the original pass was counted as sold.</p> <ul style="list-style-type: none"> - In the Operations department there was a reimbursement of \$260.07, which is well over the \$100 petty cash reimbursement limit. The Operations department also failed to provide a receipt for a reimbursement of \$5.85. - In the Human Resources Department, the petty cash limit was raised from \$200 to \$500. - The \$600 in the change fund (stored in Finance) was not included in the audit because it is not designated as petty cash. This put the petty cash total at \$2700 not \$3300. 	
Surplus Vehicles	<p>On November 5, 2014, the Board of Directors approved offering fully depreciated capital assets to JPA member entities or other governmental entities first, then to 501(c)(3) organizations in “<i>As Is Condition</i>” prior to sale at public auction. Consideration will be given to each JPA member entity on a first-come, first served basis. All requests need to be made within 30 days of the posting of the assets available for disposal. Requests can be made to the CEO/General Manager by telephone or e-mail using the appropriate form. After the assets have been offered to JPA members for 30 days, the list will be made available for 501(c)(3) organizations for 30 days. At the end of the combined 60 day period, the remaining assets will be disposed of by the Maintenance department at auction.</p> <p>The selection of the 501(c)(3) organizations will be taken from the eligibility list, which is on a first come first served basis. 501(c)(3) organizations are added to the list once a formal request is received on the organization’s letterhead.</p> <p>The process is facilitated and managed by the Internal Audit Department, the disposal of assets is conducted by Maintenance, and the final approval to provide assets to any entity is made by the CEO/GM.</p>	
National Transit Database (NTD) Reporting	<p>The National Transit Database has implemented annual data reporting requirements for all FTA grantees. It is important to ensure the data we report is valid and reliable. The Director of Internal Audit chairs an ad hoc committee, which consists of a representative from each of the departments reporting NTD information. The objectives of the committee are to discuss the information reported, review deficiencies, monitor results, and work with IT to establish solutions when the data is flawed.</p>	Ongoing in FY2017

Summary of Audit Activities for FY 2016

Engagements	Findings, Recommendations and Outcomes	Follow-Up
<p>Buy America</p>	<p>Omnitrans has selected New Flyer of America Inc., in Winnipeg, Canada and Crookston, MN, as the preferred manufacturer to manufacture thirteen (13) 40' CNG buses. Federal Transit Administration (FTA) regulations require that Omnitrans complete a pre-award audit of the bus manufacturer to determine if they comply with the Buy America requirements outlined in 49 CFR Part 661 and Part 663.</p> <p>Summary Findings</p> <p>Based upon a review of New Flyer's production capability, production methods, location of final assembly, domestic contents, compliance with FMVSS requirements, and compliance with technical specifications, it was determined that New Flyer of America Inc. meets FTA Buy America Pre-Award Audit requirements for the production of buses for Omnitrans. The review also found that New Flyer plans to comply with all of Omnitrans' technical specifications.</p> <p>The Buy America audit requirements are met by conducting audits during three phases of the production process:</p> <ul style="list-style-type: none"> - Pre-award - During assembly - Post assembly (post-production) <p>The pre-award phase was conducted in January and February of 2016.</p> <p>During the months of May and June 2016, site visits were conducted at the New Flyer assembly plant in Anniston Alabama, and post-production in Ontario, California. The purpose of the site visits was to validate compliance as outlined in the pre-production Buy America audit.</p>	<p>September 2016</p>
<p>Fare Box Audits</p>	<p>Random weekly audits are conducted at both East Valley and West Valley of the fare boxes. A coach is randomly selected at the end of the day, the fare box is probed, and the cash and coin counted is matched against the GFI report. All discrepancies are checked for faulty fare boxes, missed data, or potential fraud.</p>	<p>Ongoing in FY 2017</p>

ITEM # E6

DATE: September 7, 2016

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

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Wendy Williams, Director of Marketing & Planning

SUBJECT: JOINT PROCUREMENT MEMORANDUM OF UNDERSTANDING (MOU) WITH VICTOR VALLEY TRANSIT AUTHORITY (VVTA), MOUNTAIN TRANSIT AND MORONGO BASIN TRANSIT AUTHORITY

FORM MOTION

Authorize the CEO/General Manager to sign the joint procurement MOU between Omnitrans and VVTA;

Authorize the CEO/General Manager to sign the joint procurement MOU between Omnitrans and Mountain Transit; and

Authorize the CEO/General Manager to sign the joint procurement MOU between Omnitrans and Morongo Basin Transit Authority.

These contracts have been reviewed by Omnitrans' legal counsel.

This item was reviewed by the Plans and Programs Committee at its August 22, 2016 meeting and the authorization was recommended.

BACKGROUND

Omnitrans currently maintains two types of agreements with neighboring transit agencies. The most common of these are Cooperative Service Agreements (CSAs), which govern the sharing of information, coordination of schedules, maintenance of shared stops and customer transfer agreements. Omnitrans also maintains Mutual Aid Agreements with some neighboring transit agencies, which govern how the agencies respond to emergencies.

SANBAG completed a San Bernardino County Transit Efficiency Study in 2016. This study recommended codifying Omnitrans current practice of offering joint procurement opportunities to other San Bernardino County transit operators with a MOU. The goal of these MOUs is to maximize the potential to gain economies of scale in large procurements including buses, bus parts, CNG, CNG station maintenance, etc.

These MOUs specify the responsibilities of each member agency in a joint procurement and specifies Omnitrans' role as lead agency should the partner agencies decided to participate in a joint procurement. The MOUs do not require participation.

Approval of the proposed MOUs between Omnitrans and the other San Bernardino County transit operators has no immediate fiscal impact on Omnitrans, but may over time offer some savings opportunities.

CONCLUSION

Approval of these MOUs will make it easier for San Bernardino County transit operators to take advantage of potential cost savings from joint procurements.

PSG:WW:JB

MEMORANDUM OF UNDERSTANDING
Between
OMNITRANS
And
VICTOR VALLEY TRANSIT AUTHORITY
For
JOINT PROCUREMENT

This Memorandum of Understanding ("MOU") is effective as of this ____ day of _____, 2016, by and between Omnitrans ("OMNITRANS"), a public agency formed under a Joint Powers Agreement, whose address is 1700 West Fifth St., San Bernardino, California, 92411, and Victor Valley Transit Authority ("VVTa"), a public agency formed under a Joint Powers Agreement, whose address is address, 17150 Smoketree St., Hesperia, California, 92345. OMNITRANS and VVTa are each a "Party" and collectively the "Parties" as identified herein.

RECITALS:

WHEREAS, OMNITRANS and VVTa both provide transit service in San Bernardino County funded by a variety of federal, state, local, and fare revenue sources; and

WHEREAS, for certain types of agency procurements, it may be more cost-effective for the agencies to jointly procure such items in order to achieve economies of scale, make best use of transit funding and minimize costs; and

WHEREAS, the Parties desire to establish a mutual understanding to provide for OMNITRANS acting as lead agency, and VVTa acting as participating agency, on such joint procurements, when it is in the interest of both parties to do so; and

WHEREAS, this MOU shall supersede any and all previous joint procurement agreements between OMNITRANS and VVTa.

NOW, THEREFORE, OMNITRANS and VVTa in consideration of the mutual covenants hereinafter set forth and intending to be legally bound hereby agree as follows:

1. **Complete Agreement.** This MOU, including any exhibits and documents incorporated herein and made applicable by reference, constitutes the complete and exclusive statement of the terms and conditions of the MOU between OMNITRANS and VVTa concerning joint procurement activities, and supersedes all prior representations, understandings, and communications between the parties. The above-referenced Recitals are true and correct and are incorporated by reference herein.
2. **OMNITRANS Responsibilities.** OMNITRANS agrees to the following responsibilities for joint procurements:
 - a. Omnitrans shall serve as lead agency on joint procurements on which the agencies mutually agree to participate. Procurement services ("SERVICES")

may include, but are not limited to, working with participating agencies to prepare and issue Request for Proposals or Invitation for Bids documents, scopes of work, evaluation criteria, and addenda, acting as lead agency during the joint procurement process, communications with vendors/suppliers, leading proposal or bid evaluation processes, and awarding procurement contracts when in the interest of the parties to do so.

- b. OMNITRANS shall work with VVTA to schedule such joint procurements in a timely manner, consistent with the availability and workload of both agencies' staffs.
 - c. OMNITRANS shall ensure that the joint procurements comply with and are consistent with all federal, state and local regulations, circulars and guidelines.
 - d. OMNITRANS is acting as an independent contractor under this MOU and shall pay all wages, salaries, and other amounts due to their own personnel in connection with any and all SERVICES provided under this MOU, as well as that which may be required by law. OMNITRANS shall be responsible for all reports and obligations respecting their own personnel, including, but not limited to social security taxes, income tax withholding, unemployment insurance, benefits and workers compensation insurance. OMNITRANS shall have exclusive control over its employees and VVTA shall not have any authority to direct or control employees of OMNITRANS. OMNITRANS' employees or agents shall not be deemed VVTA employees or agents for any purpose.
 - e. OMNITRANS agrees to indemnify, defend and hold harmless VVTA, its member agencies, officers, directors, employees, and agents from and against any and all claims, liabilities, and actions whether legal, equitable or administrative, and costs and expenses (including attorney's fees and reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, damage to or loss of use of property caused by the negligent acts, omissions, or willful misconduct by OMNITRANS, its officers, directors, employees, or agents in connection with or arising out of the performance of services under this MOU. This obligation shall not apply to negligent acts, omissions or willful misconduct of VVTA, its officers, directors, employees, or agents.
3. **VVTA Responsibilities.** VVTA agrees to the following responsibilities for joint procurements:
- a. VVTA shall be actively involved as a participating agency on joint procurements on which the agencies mutually agree to pursue. As a participating agency, VVTA shall provide input on joint procurements' scopes of work, evaluation criteria, data requirements on VVTA's historic product usage and projected use, and other background information required to provide vendors with sufficient information to make viable proposals/bids on the items or services being procured. VVTA shall also participate in the proposal or bid evaluation process, and shall award its own procurement contract to the selected vendor when it is in the interest of VVTA to do so.
 - b. VVTA shall work with Omnitrans to schedule such joint procurements in a timely manner, consistent with the availability and workload of both agencies' staffs.
 - c. VVTA shall review joint procurements to ensure they comply with and are consistent with all federal, state and local regulations, circulars and guidelines.

- d. VVTA is acting as an independent contractor under this MOU and shall pay all wages, salaries, and other amounts due to their own personnel in connection with any and all SERVICES provided under this MOU, as well as that which may be required by law. VVTA shall be responsible for all reports and obligations respecting their own personnel, including, but not limited to social security taxes, income tax withholding, unemployment insurance, benefits and workers compensation insurance. VVTA shall have exclusive control over its employees and OMNITRANS shall not have any authority to direct or control employees of VVTA. VVTA's employees or agents shall not be deemed OMNITRANS employees or agents for any purpose.
- e. VVTA agrees to indemnify, defend and hold harmless OMNITRANS, its member agencies, officers, directors, employees, and agents from and against any and all claims, liabilities, and actions whether legal, equitable or administrative, and costs and expenses (including attorney's fees and reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, damage to or loss of use of property caused by the negligent acts, omissions, or willful misconduct by VVTA, its officers, directors, employees, or agents in connection with or arising out of the performance of this MOU. This obligation shall not apply to negligent acts, omissions or willful misconduct of OMNITRANS, its officers, directors, employees, or agents.

4. The Parties Mutually Understand and Agree to the following mutual responsibilities regarding joint procurements:

- a. Joint procurements may include, but are not limited to, the following items/services:
 - 1. Bus engine and/or transmission heavy overhaul
 - 2. Compressed Natural Gas (CNG) Station maintenance services
 - 3. CNG fuel supply or CNG price hedging financial instruments
 - 4. Buses or other service or support vehicles
 - 5. Other items or services used by the agencies where there is mutual interest in conducting joint procurement.
- b. The scope of work for items or services being jointly procured shall include or address jointly-developed specifications, estimated quantities by agency, contract length/options, warranties and warranty repair arrangements, shipping charges where applicable, supplier schedules, and annual escalation rates.
- c. The Request for Proposals or Invitation for Bids document developed for specific procurements shall include language requiring each agency to award its own purchase contract to the successful supplier, if a contract award is determined to be in the agency's best interest.
- d. No agency shall be required to award a contract under a joint procurement if the procurement results are not economically advantageous to that agency.
- e. Each agency shall be responsible for the cost of the items or services which that agency purchases, including shipping charges to that agency's facility.
- f. This MOU shall commence upon execution by the Parties, and shall continue in full force unless terminated as provided in this MOU.
- g. This MOU may be amended in writing at any time by the mutual consent of the Parties. No amendment shall have any force or effect unless executed in writing by the Parties. The Parties agree that non-financial administrative changes, such as changes in key personnel, may be approved administratively without re-approval by the Agencies' Boards of Directors.

- h. OMNITRANS or VVTA may terminate this MOU, without cause, by delivering written notice of termination to the other Party not less than thirty (30) calendar days before the date of termination.
- i. The persons executing this MOU on behalf of the parties hereto warrant that they are duly authorized to execute this MOU on behalf of said parties and that, by so executing this MOU, the parties hereto are formally bound to the provisions of this MOU.
- j. All notices hereunder and communications required or permitted by this MOU, or changes thereto, or by law to be served on, given to or delivered to any other Party hereto by any other Party to this MOU shall be in writing or authorized in writing, and may be sent by regular mail, email or FAX. Any such notice shall be addressed to:

Notices to OMNITRANS:

Name: Mr. Scott Graham
Title: Chief Executive Officer/General Manager
Address: 1700 West Fifth St.
City, State Zip: San Bernardino, California, 92411
Email: Scott.Graham@omnitrans.org
FAX: 909-889-5779

Notices to VVTA:

Name: Mr. Kevin Kane
Title: Executive Director
Address: 17150 Smoketree St
City, State Zip: Hesperia, California, 92345
Email: kkane@vvta.org
FAX: 760-948-1380

- k. The headings of all sections of this MOU are inserted solely for the convenience of reference and are not part of and not intended to govern, limit, or aid in the construction or interpretation of any terms or provision thereof.
- l. The provisions of this MOU shall bind and inure to the benefit of each of the parties hereto and all successors or assigns of the parties hereto.
- m. If any term, provision, covenant, or condition of this MOU is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder to this MOU shall not be affected thereby, and each term, provision, covenant or condition of this MOU shall be valid and enforceable to the fullest extent permitted by law.
- n. This MOU may be executed and delivered in any number of counterparts, each of which, when executed and delivered shall be deemed an original and all of which together shall constitute the same MOU. Secure electronic signatures will be permitted.
- o. Neither this MOU, nor any of a Party's rights, obligations or duties hereunder may be assigned in whole or in part by either Party without the prior written consent of the other Party. Any such attempt of assignment shall be deemed void and of no force and effect. Consent to one assignment shall not be deemed consent to any subsequent assignment, nor the waiver of any right to consent to such subsequent assignment.

- p. The Parties warrant that, in the performance of this MOU, they shall comply with all applicable federal, state and local laws, statutes and ordinances and lawful orders, rules and regulations promulgated thereunder.
- q. Either Party shall be excused from performing its obligations under this MOU during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including but not limited to: any incidence of fire, flood, acts of God, commandeering of material, products, plants or facilities by the federal, state or local government, national fuel shortage, or a material act or omission by the other party, when satisfactory evidence of such cause is presented to the other party, and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the party not performing.
- r. This MOU shall be construed and interpreted solely in accordance with the laws of the State of California.

IN WITNESS WHEREOF, this MOU constitutes the entire understanding of the Parties hereto, and there are no other requirements, premises, warranties, covenants or undertakings with respect thereto, and have made and executed this MOU as of the day and year first above written.

OMNITRANS

Victor Valley Transit Authority

By: _____

By: _____

Name: P. Scott Graham

Name: Kevin Kane

Title: CEO/General Manager

Title: Executive Director

Date: _____

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Name: _____

Name: _____

Title: _____

Title: _____

MEMORANDUM OF UNDERSTANDING
Between
OMNITRANS
And
MOUNTAIN AREA REGIONAL TRANSIT AUTHORITY
For
JOINT PROCUREMENT

This Memorandum of Understanding ("MOU") is effective as of this ____ day of _____, 2016, by and between Omnitrans ("OMNITRANS"), a public agency formed under a Joint Powers Agreement, whose address is 1700 West Fifth St., San Bernardino, California, 92411, and Mountain Area Regional Transit Authority ("MT"), a public agency formed under a Joint Powers Agreement, whose address is address, 41939 Fox Farm Road, Big Bear Lake, California, 92315. OMNITRANS and MT are each a "Party" and collectively the "Parties" as identified herein.

RECITALS:

WHEREAS, OMNITRANS and MT both provide transit service in San Bernardino County funded by a variety of federal, state, local, and fare revenue sources; and

WHEREAS, for certain types of agency procurements, it may be more cost-effective for the agencies to jointly procure such items in order to achieve economies of scale, make best use of transit funding and minimize costs; and

WHEREAS, the Parties desire to establish a mutual understanding to provide for OMNITRANS acting as lead agency, and MT acting as participating agency, on such joint procurements, when it is in the interest of both parties to do so; and

WHEREAS, this MOU shall supersede any and all previous joint procurement agreements between OMNITRANS and MT.

NOW, THEREFORE, OMNITRANS and MT in consideration of the mutual covenants hereinafter set forth and intending to be legally bound hereby agree as follows:

1. **Complete Agreement.** This MOU, including any exhibits and documents incorporated herein and made applicable by reference, constitutes the complete and exclusive statement of the terms and conditions of the MOU between OMNITRANS and MT concerning joint procurement activities, and supersedes all prior representations, understandings, and communications between the parties. The above-referenced Recitals are true and correct and are incorporated by reference herein.
2. **OMNITRANS Responsibilities.** OMNITRANS agrees to the following responsibilities for joint procurements:
 - a. Omnitrans shall serve as lead agency on joint procurements on which the agencies mutually agree to participate. Procurement services ("SERVICES")

may include, but are not limited to, working with participating agencies to prepare and issue Request for Proposals or Invitation for Bids documents, scopes of work, evaluation criteria, and addenda, acting as lead agency during the joint procurement process, communications with vendors/suppliers, leading proposal or bid evaluation processes, and awarding procurement contracts when in the interest of the parties to do so.

- b. OMNITRANS shall work with MT to schedule such joint procurements in a timely manner, consistent with the availability and workload of both agencies' staffs.
- c. OMNITRANS shall ensure that the joint procurements comply with and are consistent with all federal, state and local regulations, circulars and guidelines.
- d. OMNITRANS is acting as an independent contractor under this MOU and shall pay all wages, salaries, and other amounts due to their own personnel in connection with any and all SERVICES provided under this MOU, as well as that which may be required by law. OMNITRANS shall be responsible for all reports and obligations respecting their own personnel, including, but not limited to social security taxes, income tax withholding, unemployment insurance, benefits and workers compensation insurance. OMNITRANS shall have exclusive control over its employees and MT shall not have any authority to direct or control employees of OMNITRANS. OMNITRANS' employees or agents shall not be deemed MT employees or agents for any purpose.
- e. OMNITRANS agrees to indemnify, defend and hold harmless MT, its member agencies, officers, directors, employees, and agents from and against any and all claims, liabilities, and actions whether legal, equitable or administrative, and costs and expenses (including attorney's fees and reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, damage to or loss of use of property caused by the negligent acts, omissions, or willful misconduct by OMNITRANS, its officers, directors, employees, or agents in connection with or arising out of the performance of services under this MOU. This obligation shall not apply to negligent acts, omissions or willful misconduct of MT, its officers, directors, employees, or agents.

3. **MT Responsibilities.** MT agrees to the following responsibilities for joint procurements:

- a. MT shall be actively involved as a participating agency on joint procurements on which the agencies mutually agree to pursue. As a participating agency, MT shall provide input on joint procurements' scopes of work, evaluation criteria, data requirements on MT's historic product usage and projected use, and other background information required to provide vendors with sufficient information to make viable proposals/bids on the items or services being procured. MT shall also participate in the proposal or bid evaluation process, and shall award its own procurement contract to the selected vendor when it is in the interest of MT to do so.
- b. MT shall work with Omnitrans to schedule such joint procurements in a timely manner, consistent with the availability and workload of both agencies' staffs.
- c. MT shall review joint procurements to ensure they comply with and are consistent with all federal, state and local regulations, circulars and guidelines.
- d. MT is acting as an independent contractor under this MOU and shall pay all wages, salaries, and other amounts due to their own personnel in connection with any and all SERVICES provided under this MOU, as well as that which

may be required by law. MT shall be responsible for all reports and obligations respecting their own personnel, including, but not limited to social security taxes, income tax withholding, unemployment insurance, benefits and workers compensation insurance. MT shall have exclusive control over its employees and OMNITRANS shall not have any authority to direct or control employees of MT. MT's employees or agents shall not be deemed OMNITRANS employees or agents for any purpose.

- e. MT agrees to indemnify, defend and hold harmless OMNITRANS, its member agencies, officers, directors, employees, and agents from and against any and all claims, liabilities, and actions whether legal, equitable or administrative, and costs and expenses (including attorney's fees and reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, damage to or loss of use of property caused by the negligent acts, omissions, or willful misconduct by MT, its officers, directors, employees, or agents in connection with or arising out of the performance of this MOU. This obligation shall not apply to negligent acts, omissions or willful misconduct of OMNITRANS, its officers, directors, employees, or agents.

4. The Parties Mutually Understand and Agree to the following mutual responsibilities regarding joint procurements:

- a. Joint procurements may include, but are not limited to, the following items/services:
 - 1. Bus engine and/or transmission heavy overhaul
 - 2. Compressed Natural Gas (CNG) Station maintenance services
 - 3. CNG fuel supply or CNG price hedging financial instruments
 - 4. Buses or other service or support vehicles
 - 5. Other items or services used by the agencies where there is mutual interest in conducting joint procurement.
- b. The scope of work for items or services being jointly procured shall include or address jointly-developed specifications, estimated quantities by agency, contract length/options, warranties and warranty repair arrangements, shipping charges where applicable, supplier schedules, and annual escalation rates.
- c. The Request for Proposals or Invitation for Bids document developed for specific procurements shall include language requiring each agency to award its own purchase contract to the successful supplier, if a contract award is determined to be in the agency's best interest.
- d. No agency shall be required to award a contract under a joint procurement if the procurement results are not economically advantageous to that agency.
- e. Each agency shall be responsible for the cost of the items or services which that agency purchases, including shipping charges to that agency's facility.
- f. This MOU shall commence upon execution by the Parties, and shall continue in full force unless terminated as provided in this MOU.
- g. This MOU may be amended in writing at any time by the mutual consent of the Parties. No amendment shall have any force or effect unless executed in writing by the Parties. The Parties agree that non-financial administrative changes, such as changes in key personnel, may be approved administratively without re-approval by the Agencies' Boards of Directors.
- h. OMNITRANS or MT may terminate this MOU, without cause, by delivering written notice of termination to the other Party not less than thirty (30) calendar days before the date of termination.

- i. The persons executing this MOU on behalf of the parties hereto warrant that they are duly authorized to execute this MOU on behalf of said parties and that, by so executing this MOU, the parties hereto are formally bound to the provisions of this MOU.
- j. All notices hereunder and communications required or permitted by this MOU, or changes thereto, or by law to be served on, given to or delivered to any other Party hereto by any other Party to this MOU shall be in writing or authorized in writing, and may be sent by regular mail, email or FAX. Any such notice shall be addressed to:

Notices to OMNITRANS:

Name: Mr. Scott Graham
Title: Chief Executive Officer/General Manager
Address: 1700 West Fifth St.
City, State Zip: San Bernardino, California, 92411
Email: Scott.Graham@omnitrans.org
FAX: 909-889-5779

Notices to MT:

Name: Ms. Kathy Hawksford
Title: General Manager/Chief Executive Officer
Physical Address: 41939 Fox Farm Road
Mailing Address: PO Box 1501
City, State Zip: Big Bear Lake, California, 92315
Email: khawksford@mountaintransit.org
FAX: 909-963-7200

- k. The headings of all sections of this MOU are inserted solely for the convenience of reference and are not part of and not intended to govern, limit, or aid in the construction or interpretation of any terms or provision thereof.
- l. The provisions of this MOU shall bind and inure to the benefit of each of the parties hereto and all successors or assigns of the parties hereto.
- m. If any term, provision, covenant, or condition of this MOU is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder to this MOU shall not be affected thereby, and each term, provision, covenant or condition of this MOU shall be valid and enforceable to the fullest extent permitted by law.
- n. This MOU may be executed and delivered in any number of counterparts, each of which, when executed and delivered shall be deemed an original and all of which together shall constitute the same MOU. Secure electronic signatures will be permitted.
- o. Neither this MOU, nor any of a Party's rights, obligations or duties hereunder may be assigned in whole or in part by either Party without the prior written consent of the other Party. Any such attempt of assignment shall be deemed void and of no force and effect. Consent to one assignment shall not be deemed consent to any subsequent assignment, nor the waiver of any right to consent to such subsequent assignment.
- p. The Parties warrant that, in the performance of this MOU, they shall comply with all applicable federal, state and local laws, statutes and ordinances and lawful orders, rules and regulations promulgated thereunder.

- q. Either Party shall be excused from performing its obligations under this MOU during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including but not limited to: any incidence of fire, flood, acts of God, commandeering of material, products, plants or facilities by the federal, state or local government, national fuel shortage, or a material act or omission by the other party, when satisfactory evidence of such cause is presented to the other party, and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the party not performing.
- r. This MOU shall be construed and interpreted solely in accordance with the laws of the State of California.

IN WITNESS WHEREOF, this MOU constitutes the entire understanding of the Parties hereto, and there are no other requirements, premises, warranties, covenants or undertakings with respect thereto, and have made and executed this MOU as of the day and year first above written.

OMNITRANS

MOUNTAIN TRANSIT

By: _____

By: _____

Name: P. Scott Graham

Name: Kathy Hawksford

Title: CEO/General Manager

Title: General Manager/CEO

Date: _____

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Name: _____

Name: _____

Title: _____

Title: _____

MEMORANDUM OF UNDERSTANDING
Between
OMNITRANS
And
MORONGO BASIN TRANSIT AUTHORITY
For
JOINT PROCUREMENT

This Memorandum of Understanding ("MOU") is effective as of this ____ day of _____, 2016, by and between Omnitrans ("OMNITRANS"), a public agency formed under a Joint Powers Agreement, whose address is 1700 West Fifth St., San Bernardino, California, 92411, and Morongo Basin Transit Authority ("MBTA"), a public agency formed under a Joint Powers Agreement, whose address is 62405 Verbena Road, Joshua Tree, California, 92252. OMNITRANS and MBTA are each a "Party" and collectively the "Parties" as identified herein.

RECITALS:

WHEREAS, OMNITRANS and MBTA both provide transit service in San Bernardino County funded by a variety of federal, state, local, and fare revenue sources; and

WHEREAS, for certain types of agency procurements, it may be more cost-effective for the agencies to jointly procure such items in order to achieve economies of scale, make best use of transit funding and minimize costs; and

WHEREAS, the Parties desire to establish a mutual understanding to provide for OMNITRANS acting as lead agency, and MBTA acting as participating agency, on such joint procurements, when it is in the interest of both parties to do so; and

WHEREAS, this MOU shall supersede any and all previous joint procurement agreements between OMNITRANS and MBTA.

NOW, THEREFORE, OMNITRANS and MBTA in consideration of the mutual covenants hereinafter set forth and intending to be legally bound hereby agree as follows:

1. **Complete Agreement.** This MOU, including any exhibits and documents incorporated herein and made applicable by reference, constitutes the complete and exclusive statement of the terms and conditions of the MOU between OMNITRANS and MBTA concerning joint procurement activities, and supersedes all prior representations, understandings, and communications between the parties. The above-referenced Recitals are true and correct and are incorporated by reference herein.
2. **OMNITRANS Responsibilities.** OMNITRANS agrees to the following responsibilities for joint procurements:
 - a. Omnitrans shall serve as lead agency on joint procurements on which the agencies mutually agree to participate. Procurement services ("SERVICES")

may include, but are not limited to, working with participating agencies to prepare and issue Request for Proposals or Invitation for Bids documents, scopes of work, evaluation criteria, and addenda, acting as lead agency during the joint procurement process, communications with vendors/suppliers, leading proposal or bid evaluation processes, and awarding procurement contracts when in the interest of the parties to do so.

- b. OMNITRANS shall work with MBTA to schedule such joint procurements in a timely manner, consistent with the availability and workload of both agencies' staffs.
- c. OMNITRANS shall ensure that the joint procurements comply with and are consistent with all federal, state and local regulations, circulars and guidelines.
- d. OMNITRANS is acting as an independent contractor under this MOU and shall pay all wages, salaries, and other amounts due to their own personnel in connection with any and all SERVICES provided under this MOU, as well as that which may be required by law. OMNITRANS shall be responsible for all reports and obligations respecting their own personnel, including, but not limited to social security taxes, income tax withholding, unemployment insurance, benefits and workers compensation insurance. OMNITRANS shall have exclusive control over its employees and MBTA shall not have any authority to direct or control employees of OMNITRANS. OMNITRANS' employees or agents shall not be deemed MBTA employees or agents for any purpose.
- e. OMNITRANS agrees to indemnify, defend and hold harmless MBTA, its member agencies, officers, directors, employees, and agents from and against any and all claims, liabilities, and actions whether legal, equitable or administrative, and costs and expenses (including attorney's fees and reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, damage to or loss of use of property caused by the negligent acts, omissions, or willful misconduct by OMNITRANS, its officers, directors, employees, or agents in connection with or arising out of the performance of services under this MOU. This obligation shall not apply to negligent acts, omissions or willful misconduct of MBTA, its officers, directors, employees, or agents.
- f. To the fullest extent permitted by law, OMNITRANS shall protect, indemnify, defend and hold harmless MBTA and any and all of its officials, employees, volunteers, and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, and costs and expenses (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees) where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the negligence, recklessness, or willful misconduct of MBTA, its officers, agents,

3. **MBTA Responsibilities.** MBTA agrees to the following responsibilities for joint procurements:

- a. MBTA shall be actively involved as a participating agency on joint procurements on which the agencies mutually agree to pursue. As a participating agency, MBTA shall provide input on joint procurements' scopes of work, evaluation criteria, data requirements on MBTA's historic product usage and projected use, and other background information required to provide vendors with sufficient information to make viable proposals/bids on the items

or services being procured. MBTA shall also participate in the proposal or bid evaluation process, and shall award its own procurement contract to the selected vendor when it is in the interest of MBTA to do so.

- b. MBTA shall work with Omnitrans to schedule such joint procurements in a timely manner, consistent with the availability and workload of both agencies' staffs.
- c. MBTA shall review joint procurements to ensure they comply with and are consistent with all federal, state and local regulations, circulars and guidelines.
- d. MBTA is acting as an independent contractor under this MOU and shall pay all wages, salaries, and other amounts due to their own personnel in connection with any and all SERVICES provided under this MOU, as well as that which may be required by law. MBTA shall be responsible for all reports and obligations respecting their own personnel, including, but not limited to social security taxes, income tax withholding, unemployment insurance, benefits and workers compensation insurance. MBTA shall have exclusive control over its employees and OMNITRANS shall not have any authority to direct or control employees of MBTA. MBTA's employees or agents shall not be deemed OMNITRANS employees or agents for any purpose.
- e. MBTA agrees to indemnify, defend and hold harmless OMNITRANS, its member agencies, officers, directors, employees, and agents from and against any and all claims, liabilities, and actions whether legal, equitable or administrative, and costs and expenses (including attorney's fees and reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, damage to or loss of use of property caused by the negligent acts, omissions, or willful misconduct by MBTA, its officers, directors, employees, or agents in connection with or arising out of the performance of this MOU. This obligation shall not apply to negligent acts, omissions or willful misconduct of OMNITRANS, its officers, directors, employees, or agents.
- f. To the fullest extent permitted by law, MBTA shall protect, indemnify, defend and hold harmless OMNITRANS and any and all of its officials, employees, volunteers, and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, and costs and expenses (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees) where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the negligence, recklessness, or willful misconduct of OMNITRANS, its officers, agents,

4. The Parties Mutually Understand and Agree to the following mutual responsibilities regarding joint procurements:

- a. Joint procurements may include, but are not limited to, the following items/services:
 - 1. Bus engine and/or transmission heavy overhaul
 - 2. Compressed Natural Gas (CNG) Station maintenance services
 - 3. CNG fuel supply or CNG price hedging financial instruments
 - 4. Non-revenue support vehicles
 - 5. Other items or services used by the agencies where there is mutual interest in conducting joint procurement.
- b. The scope of work for items or services being jointly procured shall include or address jointly-developed specifications, estimated quantities by agency,

contract length/options, warranties and warranty repair arrangements, shipping charges where applicable, supplier schedules, and annual escalation rates.

- c. The Request for Proposals or Invitation for Bids document developed for specific procurements shall include language requiring each agency to award its own purchase contract to the successful supplier, if a contract award is determined to be in the agency's best interest.
- d. Participation in joint procurements is entirely voluntary on the part of each agency. Either agency may withdraw after a joint procurement is developed and before it is advertised. Furthermore, no agency shall be required to award a contract under a joint procurement if the procurement results are not economically advantageous to that agency.
- e. Each agency shall be responsible for the cost of the items or services which that agency purchases, including shipping charges to that agency's facility.
- f. This MOU shall commence upon execution by the Parties, and shall continue in full force unless terminated as provided in this MOU.
- g. This MOU may be amended in writing at any time by the mutual consent of the Parties. No amendment shall have any force or effect unless executed in writing by the Parties. The Parties agree that non-financial administrative changes, such as changes in key personnel, may be approved administratively without re-approval by the Agencies' Boards of Directors.
- h. OMNITRANS or MBTA may terminate this MOU, without cause, by delivering written notice of termination to the other Party not less than thirty (30) calendar days before the date of termination.
- i. The persons executing this MOU on behalf of the parties hereto warrant that they are duly authorized to execute this MOU on behalf of said parties and that, by so executing this MOU, the parties hereto are formally bound to the provisions of this MOU.
- j. All notices hereunder and communications required or permitted by this MOU, or changes thereto, or by law to be served on, given to or delivered to any other Party hereto by any other Party to this MOU shall be in writing or authorized in writing, and may be sent by regular mail, email or FAX. Any such notice shall be addressed to:

Notices to OMNITRANS:

Name: Mr. Scott Graham
Title: Chief Executive Officer/General Manager
Address: 1700 West Fifth St.
City, State Zip: San Bernardino, California, 92411
Email: Scott.Graham@omnitrans.org
FAX: 909-889-5779

Notices to the MBTA:

Name: Mark Goodale
Title: General Manager
Physical Address: 62405 Verbena Road
City, State Zip: Joshua Tree, California, 92252
Email: mark@mbtabus.com
FAX: 760-366-2445

- k. The headings of all sections of this MOU are inserted solely for the convenience of reference and are not part of and not intended to govern, limit, or aid in the construction or interpretation of any terms or provision thereof.
- l. The provisions of this MOU shall bind and inure to the benefit of each of the parties hereto and all successors or assigns of the parties hereto.
- m. If any term, provision, covenant, or condition of this MOU is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder to this MOU shall not be affected thereby, and each term, provision, covenant or condition of this MOU shall be valid and enforceable to the fullest extent permitted by law.
- n. This MOU may be executed and delivered in any number of counterparts, each of which, when executed and delivered shall be deemed an original and all of which together shall constitute the same MOU. Secure electronic signatures will be permitted.
- o. Neither this MOU, nor any of a Party's rights, obligations or duties hereunder may be assigned in whole or in part by either Party without the prior written consent of the other Party. Any such attempt of assignment shall be deemed void and of no force and effect. Consent to one assignment shall not be deemed consent to any subsequent assignment, nor the waiver of any right to consent to such subsequent assignment.
- p. The Parties warrant that, in the performance of this MOU, they shall comply with all applicable federal, state and local laws, statutes and ordinances and lawful orders, rules and regulations promulgated thereunder.
- q. Either Party shall be excused from performing its obligations under this MOU during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including but not limited to: any incidence of fire, flood, acts of God, commandeering of material, products, plants or facilities by the federal, state or local government, national fuel shortage, or a material act or omission by the other party, when satisfactory evidence of such cause is presented to the other party, and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the party not performing.
- r. This MOU shall be construed and interpreted solely in accordance with the laws of the State of California.

IN WITNESS WHEREOF, this MOU constitutes the entire understanding of the Parties hereto, and there are no other requirements, premises, warranties, covenants or undertakings with respect thereto, and have made and executed this MOU as of the day and year first above written.

OMNITRANS

Morongo Basin Transit Authority

By: _____

By: _____

Name: P. Scott Graham

Name: Mark Goodale

Title: CEO/General Manager

Title: General Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Name: _____

Name: _____

Title: _____

Title: _____

DRAFT

ITEM # E7

DATE: September 7, 2016

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

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Wendy Williams, Director of Marketing & Planning

**SUBJECT: OMNITRANS' TITLE VI DISPARATE IMPACT AND
DISPROPORTIONATE BURDEN POLICY**

FORM MOTION

Adopt Omnitrans' proposed Title VI Disparate Impact and Disproportionate Burden Policy.

This item was reviewed by the Plans and Programs Committee at its August 22, 2016 meeting and recommended for adoption.

BACKGROUND

As a recipient of federal funding, Omnitrans must abide by mandates set forth in Title VI of the Civil Rights Act of 1965. According to this act, an agency can not discriminate, directly or indirectly, in its service or planning, against minority or low-income communities.

In order to demonstrate compliance, Omnitrans must perform equity analyses as part of its planning process before the implementation of any fare change or any major service change. This is in addition to routinely demonstrating compliance in a required triennial Title VI report.

Omnitrans has routinely completed service equity analyses as required by the Federal Transit Administration (FTA). During the recent triennial audit of Omnitrans, the auditor complemented Omnitrans' demographic analysis and demographic mapping as one of the best the auditor had seen.

Omnitrans' existing practice of Title VI service equity analysis has been to evaluate each change on its own merit. Based on the conditions pertinent to that change, any disparate impact or disproportionate burden would be determined based on those specific conditions. A few peer agencies have had audit findings on similar practices and were required to specifically define a numeric threshold for determining disparate impacts and disproportionate burdens.

Omnitrans' proposed Title VI Disparate Impact and Disproportionate Burden Policy quantitatively defines a disparate impact and disproportionate burden as a change that causes

more than a ten-percent (10%) change to the proportion of low-income and minority population as compared to the existing conditions prior to the proposed change. The policy also defines how data are collected, maintained, analyzed and reported.

This policy as presented is in compliance with current FTA Title VI requirements.

CONCLUSION

Adoption of this Disparate Impact and Disproportionate Burden Policy will enable Omnitrans to better track compliance with Title VI requirements.

PSG:WW:JB:SB

Title VI Disparate Impact and Disproportionate Burden

Introduction

As a recipient of federal funding, Omnitrans must abide by mandates set forth in Title VI of the Civil Rights Act of 1965. Title VI dictates that an agency cannot in its service or planning discriminate directly or indirectly against minority or low income communities.

In order to demonstrate compliance, Omnitrans must perform equity analyses as part of its planning process before the implementation of any fare change or any major service change, and triennially must deliver a more in-depth report showing the same. In both cases, Omnitrans must demonstrate that it meets its Title VI obligations, and show that changes it has adopted do not adversely affect Minority or Low Income populations (LIM) either directly, or by disparate impact or disproportionate burden. This policy concretely sets out how Omnitrans will quantitatively measure disparate impact and disproportionate burden.

DEFINITIONS

1. **Title VI Analysis:** The demographic and spatial analysis undertaken in order to demonstrate Omnitrans' compliance with its mandate to not discriminate against or adversely impact in its service to low-income or minority populations.
2. **Equity Analysis:** The analysis undertaken in order to determine whether planned changes to Omnitrans' service or fare structures would constitute a violation of its Title VI mandate.
3. **LIM (Low Income/Minority):** The sum of all minority residents within a given region (regardless of income level), plus all low income (poverty level) white residents in the same region. LIM proportion refers to the percentage of all residents in a given region which are either minority or low-income white residents.
4. **Fare change:** Any change in the agency's fare structure including any increase in fares, any elimination of fare types without equivalents, and, any introduction of a new fare type or fare alternative, including reduced fare service. Fare changes specifically exclude temporary fare reductions and promotional fare reductions.
5. **Major Service Change:** Any service changes that represent a net change of twenty-five percent (25%) of total service miles, hours or boardings on any route.

Collection, Maintenance, and Reporting of Demographic Data

Demographic data salient to the service area will derive from the latest United States Census or American Community Survey, in the form of either traffic analysis zone (TAZ), tract, block group, or block level data sets. Necessary elements will include but not be limited to: total numbers of residents, total numbers of minority residents, and total numbers of low income white residents. In addition to these demographic analyses, the assessment(s) may also rely on customer satisfactions surveys; origins,

boardings, alightings, and destinations surveys; demographic mapping, primary language spoken; age distribution of the population, etc.

Quantitative Measures

One-half mile pedestrian buffers will be utilized for areas served. Demographic data will be obtained from within these buffers.

Appropriate Comparisons

Given the disparate nature of Omnitrans' service area, it is necessary that commensurable LIM comparisons be made in equity analyses. For example, Omnitrans serves fifteen different cities and unincorporated portions of the county as part of its Joint Powers Agreement, and the demographic profiles of these communities differ substantially. If a change is contemplated in routes serving lower LIM communities, a comparison made only between the LIM profile of the route being changed and the LIM profile of the service area as a whole would be unrealistic. As such, the agency shall make comparisons to locally-derived LIM populations from the community or communities immediately surrounding the area of proposed change. For these reasons, more than one comparison should be made.

In all cases, the most appropriate spatial comparison(s) should be used in the LIM measure. This should be the next larger immediately surrounding and appropriate area to the change being considered AND the most locally immediate coverage LIM from before the change. The following examples should guide LIM comparisons:

LIM of Area to be Measured	What LIM to Compare it to
(New) Service Area LIM	Compare to County LIM overall, AND to Service Area LIM before change
New Single Route LIM (new route)	Compare to the same area's single route LIM before the change (OR to component route elements from before change, if the route is new), AND to Service Area LIM (optional: compare to Local Service area, e.g., East Valley or West Valley)
Single Route LIM in an idiosyncratic region of Service Area	Compare to old version of the route from before the change, AND to Service Area LIM, AND to Local Service Area LIM of the region surrounding the route.
Single Route(s) LIM for realignments	Compare to salient coverage LIM from the same region from before the change AND to Single Route LIM from before the change.
LIM of a Suite of Routes being changed together	Compare to LIM of same suite of routes before the change (or a corresponding suite of component route elements covering the same area) AND compare to either Local Service area (EV or WV) or to Service Area LIM.
LIM of allocated resources (new stops, shelters, amenities; new coaches; new facility, etc)	Compare to background (Service Area LIM) AND to buffer of all stops and/or local stops, and all amenities stops LIM, etc.

In addition, changes within any route will need to be compared to the route before the change. In all pertinent cases, a before and after comparison will need to be made.

Margin of Error (10% Rule)

Given the probabilistic nature of the data used in demographic analysis, a statistical margin of error of 10% will be built into the data analyses.

Determination

If the proposed change's LIM value equals or exceeds that of the original state or the out-group used for comparison within a 10% margin of error, then the proposed change is considered not to cause disparate impact or disproportionate burden. If the proposed change's LIM value is less than that of the original state (before and after study) beyond a 10% margin of error, then the finding indicates a disparate impact or disproportionate burden. Examples of this evaluation criteria will be found in Omnitrans' Title VI Procedures.

CONSEQUENCES OF DISPARATE IMPACT

If, as part of the planning process, disparate impact or disproportionate burden is determined, then Omnitrans will do the following:

- Omnitrans must evaluate alternatives and mitigate burdens where practicable. This will take the form of examining reasonable alternative route structures or alignments.
- If in the case of fare change(s), mitigation will take the form of offering other compensatory fare alternatives along with the proposed change, so that burdened riders will have a choice in the fares they could purchase. Such alternatives can include multi-day (e.g., 7 day) passes and monthly (e.g., 31 day) passes which lower per-unit cost for tickets, and thus give burdened riders some alternative to the proposed increased fare.
- If there exists one or more alternatives that would serve the same legitimate objectives, but with reduced disparate impact or disproportionate burden, then an alternative must be implemented.
- If the action cannot be mitigated, then Omnitrans will present a substantial argument that shows the action meets a legitimate objective, and that the agency has attempted alternatives to the proposed change, but these alternatives are demonstrably worse than the proposal and also fail to meet Title VI obligations themselves. This must all be accomplished before the change moves forward.

ITEM # E8

DATE: September 7, 2016

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

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Wendy Williams, Director of Marketing & Planning

**SUBJECT: CALL FOR PUBLIC HEARING FOR MAJOR SERVICE CHANGE
PROPOSAL FOR ROUTE 215**

FORM MOTION

Authorize the CEO/General Manager to issue a Call for Public Hearing for a proposed change to Route 215 service to the Riverside Transit Center.

This item was reviewed by the Plans and Programs Committee at its August 22, 2016 meeting and the authorization was recommended.

BACKGROUND

Omnitrans Route 215 is a freeway express route on Interstate 215 that connects Downtown San Bernardino and Downtown Riverside with stops at each city's transit center. Effective in January 2017, Riverside Transit Agency (RTA) will close the Riverside Transit Center and move to a series of street stops approximately 0.3 miles away. Since the Riverside Transit Center is closing, Omnitrans must shift its bus stop to the new on-street transfer mall.

In most cases, the change of one stop along a route does not require a public hearing as the route itself, and the hours and miles of the route remain effectively unchanged. However, forty percent (40%) of boardings on Route 215 occur at the Riverside Transit Center. Omnitrans' major service change policy sets the public hearing threshold at 25% of boardings. As a result, a public hearing is required.

Omnitrans proposes to hold the required public hearings at the San Bernardino Transit Center at or near the Route 215 stop on Thursday, November 3, from 6:00 A.M. through 6:00 P.M. to be combined with a listening session regarding Omnitrans family of freeway express services.

Additionally, as the new street stops reduce Omnitrans total miles traveled on local streets in Riverside, this change allows Omnitrans to extend service to the Downtown Metrolink Station.

Omnitrans has entered into discussions with the Riverside County Transportation Commission (RCTC) for access to a stop at the Metrolink station and for funding for this enhanced connection. This potential extension offers Riverside County residents with a direct connection to the higher frequency and longer service span along the San Bernardino Metrolink line, which RCTC values because of the constraints on the rail line between San Bernardino and Riverside. San Bernardino county residents benefit from this potential extension by improving the connections to Metrolink's Riverside, 91, Inland Empire-Orange County (IEOC) and Perris Valley lines. Lastly, this extension would also add a connection between Omnitrans and Megabus, a private, low-cost, inter-city express bus service provider.

CONCLUSION

With the closing of the Riverside Transit Center expected in January 2017, Omnitrans must hold a public hearing to be in compliance with Omnitrans' major service change policy.

PSG:WW:JB

ITEM # E9

DATE: September 7, 2016

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

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Wendy Williams, Director of Marketing & Planning

SUBJECT: COOPERATIVE SERVICE AGREEMENT WITH PASS TRANSIT

FORM MOTION

Authorize the CEO/General Manager to sign the Interagency Service Agreement between Omnitrans and Pass Transit.

This item was reviewed by Omnitrans' legal counsel.

This item was reviewed by the Plans and Programs Committee at its August 22, 2016 meeting and the authorization was recommended.

BACKGROUND

Omnitrans maintains Interagency Service Agreements also called Cooperative Service Agreements (CSAs) with each of Omnitrans' neighboring transit agencies. These agreements govern the sharing of information, coordination of schedules, maintenance of shared stops and customer transfer agreements. Omnitrans currently has CSAs with Riverside Transit Agency (RTA), Foothill Transit, Victor Valley Transit Agency (VVTA), Orange County Transportation Authority (OCTA), Mountain Transit, Metrolink, and Los Angeles County Metropolitan Transportation Authority (METRO).

Omnitrans desires to enter into a new CSA with Pass Transit which serves the City of Beaumont and Calimesa in Riverside County. In August 2016, Pass Transit began a new service in the City of Calimesa (Route 136) that offers connection to Omnitrans' OmniGo service in Yucaipa along Countyline Road. Adoption of this CSA will allow customers to more easily transfer between Pass Transit and OmniGo service.

Additionally, Pass Transit has CommuterLink service that serves the San Bernardino Metrolink Station and the Jerry Pettis VA Medical Center in Loma Linda. While discussing the connections to Route 136, Omnitrans offered and Pass Transit accepted an invitation to connect with Omnitrans, Mountain Transit and Victor Valley Transit Agency at the San Bernardino Transit

Center (SBTC). This CSA also allows for improved transfers at the SBTC. Omnitrans will accept a free transfer from CommuterLink 120, and Omnitrans riders will get a \$1.00 discount off of Commuter Link fares as Commuter Link has a higher \$3 premium fare.

Approval of the proposed CSA between Omnitrans and Pass Transit will have no fiscal impact on Omnitrans.

CONCLUSION

Approval of this Cooperative Service Agreement will improve the ease of transferability between Omnitrans and Pass Transit while adding no additional cost to Omnitrans.

PSG:WW:JB

**INTERAGENCY SERVICE AGREEMENT BETWEEN
OMNITRANS
AND
THE CITY OF BEAUMONT**

THIS AGREEMENT is made and entered into this ____ day of _____ 2016 by and between Omnitrans, a public agency formed under a Joint Powers Agreement, 1700 W. Fifth Street, San Bernardino, California 92411 (hereinafter referred to as "OMNITRANS"); and the City of Beaumont, a municipal corporation, 550 East 6th Street, Beaumont, California 92223 (hereinafter referred to as "CITY").

RECITALS:

WHEREAS, OMNITRANS and CITY are empowered by law to provide the general public with convenient, safe and accessible transportation within their respective jurisdictions; and

WHEREAS, CITY operates a transit system that is commonly known as "Pass Transit;" and

WHEREAS, OMNITRANS and CITY desire to cooperate and coordinate in route planning, scheduling, stops, transfers, fares and information dissemination; and

WHEREAS, both parties agree that this Agreement shall be non-financial in nature;

WHEREAS, this agreement shall supersede any and all previous service agreements between OMNITRANS and CITY;

NOW, THEREFORE, it is mutually understood and agreed by OMNITRANS and CITY as follows:

ARTICLE 1. PUBLIC INFORMATION

OMNITRANS and CITY agree to cooperate in providing the public with specific transit information, advertising the operations of both agencies and promoting the general use of transit.

ARTICLE 2. STOPS

A. OMNITRANS and CITY agree to cooperate in the location, installation and maintenance of all jointly used bus stops, including use of the other's poles and posts at joint transfer points.

B. Each party shall be solely responsible for claims for damages arising out of its installation of its bus stop signs or passenger amenities.

C. Each party agrees to the establishment of stops in the other's service area, subject to approval of each specific stop.

D. Each party may negotiate with the other party regarding boarding restrictions within its respective service area where duplication of service or potential revenue loss may occur.

E. Each party shall be responsible for obtaining any required licenses or permits and paying any necessary fees in order to establish bus stops, install amenities or operate service in either service area.

ARTICLE 3. FARES

Fares may vary in accordance with adopted policies of each party. Each party shall retain all fares collected in the operation of their service.

ARTICLE 4. TRANSFER CONNECTIONS

OMNITRANS and CITY agree to facilitate minimization of passenger waiting time, and both parties shall coordinate schedules whenever practical.

ARTICLE 5. TRANSFER

A. OMNITRANS shall accept CITY'S transfer media valued at OMNITRANS' base fare for that service toward OMNITRANS' regular fixed route service at locations where OMNITRANS' and Pass Transit's services intersect. In the event that the base fare for

Pass Transit service is valued at more than OMNITRANS' base fare, no change or credit will be due to the passenger. Passengers are not required to top-up their fare to cover any shortfall between the Pass Transit's and OMNITRANS' base fares. Transfer media includes valid multi-use passes such as daily, weekly and monthly passes issued for various fare categories including but not limited to full-fare, senior, disabled, Medicare, veteran, student and youth categories.

B. CITY shall accept OMNITRANS' transfer media valued at Pass Transit's base fare for that service toward Pass Transit's regular fixed route service at locations where OMNITRANS' and Pass Transit's services intersect. In the event that OMNITRANS' base fare is valued at more than Pass Transit's base fare, no change or credit will be due the passenger. Passengers are not required to top-up their fare to cover any shortfall between the OMNITRANS and Pass Transit base fares. However, passengers will pay any equalizing (or top-up) fare, to transfer to any Pass Transit CommuterLink buses with their applicable premium fare. Transfer media includes valid multi-use passes such as daily, weekly and monthly passes issued for various fare categories including but not limited to full-fare, senior, disabled, Medicare, veteran, student and youth categories.

C. CITY shall accept OMNITRANS' transfer media for a one dollar (\$1) discount on Pass Transit CommuterLink buses with their applicable premium fare. Transfer media includes valid multi-use passes such as daily, weekly and monthly passes issued for various fare categories including but not limited to full-fare, senior, disabled, Medicare, veteran, student and youth categories.

D. The transfer media are not valid for Dial-A-Ride or Access Service.

E. Each party shall accept the other party's valid employee passes on all fixed route and commuter services in lieu of payment of fare.

F. CITY shall accept OMNITRANS' Military Veteran Identification (currently issued by the County of San Bernardino Department of Veteran Affairs) for purchase of Pass Transit's reduced Veterans fares.

G. OMNITRANS shall accept CITY's Military Veteran Identification for purchase of OMNITRANS' reduced Veterans fares.

ARTICLE 6. OPERATIONAL INFORMATION

Each party shall formally inform the Director of Planning or Transit Director of the other party of future plans for route and schedule changes, exclusive of temporary demand and emergency situations, no later than 30 days before the changes are scheduled to be implemented.

ARTICLE 7. CONTROL AND RESPONSIBILITY

A. Each party to this Agreement, in its operations pursuant hereto, is acting as an independent contractor and agrees to indemnify and hold the other party, including its officers, directors, employees, agents, subcontractors and suppliers, harmless from and against all claims, losses, damages and expenses, including attorney's fees, on account of bodily injury to or death of any person, or for property damage arising out of the performance of services described in this Agreement including but not limited to each party's provision of transportation services within or without the jurisdiction of the other party, except to the extent caused by the negligence or acts or omissions of the other party.

B. Each party to this agreement shall indemnify, defend and hold harmless the other party, including its officers, directors, employees, agents, subcontractors and suppliers, from and against any and all liability or expense including any claim of liability and any and all losses or costs, including legal expenses and costs of expert witnesses and consultants, that may be imposed by the other party solely by virtue of the provisions of Section 895.2 of the California Government Code.

ARTICLE 8. SERVICE TO BE OPERATED

Each party may operate non-duplicating services in the other's jurisdiction with the written approval of the other agency. Every attempt shall be made to coordinate alignments, schedules, stops, fare policies, and route planning for the safety and convenience of the general public.

ARTICLE 9. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

Each party shall be solely responsible for complying with the Americans with Disabilities Act of 1991 (ADA) as amended, including the provision of parallel ADA demand response service along each party's fixed routes operated in the other party's service area.

ARTICLE 10, NO MONETARY CLAIMS

Neither party shall have any claims against or liabilities to the other party on account of expenses incurred or revenues received or lost as a result of this Agreement except as otherwise provided.

ARTICLE 11. TERMS OF THE AGREEMENT

This Agreement shall be effective on the date of full execution and will remain in effect until terminated by either party by giving 60 days written notice to the other party.

ARTICLE 12. NOTIFICATION AND MAILING ADDRESSES

Any requests and demands made between the parties pursuant to this Agreement are to be directed as follows:

City of Beaumont:

Pass Transit

550 East 6th Street

Beaumont, CA 92223

Attn: City Manager

(951)769-8520

OMNITRANS:

Omnitrans

1700 W. Fifth St.

San Bernardino, CA 92411

Attn: P. Scott Graham

CEO/General Manager

(909) 379-7100

Any notices of service and schedule changes are to be directed as follows:

City of Beaumont:

Pass Transit

550 East 6th Street

Beaumont, CA 92223

Attn: Elizabeth Gibbs

Transit Director

(951) 769-8530

OMNITRANS:

Omnitrans

1700 W. Fifth St.

San Bernardino, CA 92411

Attn: Wendy Williams

Director of Marketing & Planning

(909) 379-7251

This Agreement constitutes the entire agreement between the parties and supersedes any prior or contemporaneous understanding or agreement with respect to the services

contemplated, and may be amended only by a written amendment executed by both parties to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written.

CITY OF BEAUMONT

OMNITRANS

By _____

Mike Lara
Mayor

By _____

P. Scott Graham
CEO/General Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By _____

John O. Pinkney
City Attorney

By _____

Erica L. Vega
Omnitrans Counsel

ITEM # E10

DATE: September 7, 2016

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

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE RELEASE - RFP-MKP17-18, PASSENGER AND SBX
CORRIDOR BUSINESS SURVEYS**

FORM MOTION

Authorize the CEO/General Manager to release Request for Proposals RFP-MKP17-18 for the provision of Passenger and sbX Corridor Business Surveys to facilitate the collection of data necessary to complete the sbX Greenline Before-and-After Study.

BACKGROUND

The Federal Transit Administration (FTA) requires Small Starts grant recipients to complete a “Before-and-After Study” (Study) two years following the launch of revenue service of the federally assisted project. Before-and-After studies are intended to assess the impact of the project on ridership two years after start of revenue service and identify the sources of differences between predicted and actual outcomes. Omnitrans is required to conduct a study of the sbX Greenline, which commenced revenue service on April 28, 2014.

The Study will compare key project components at three different time periods during the project’s lifecycle: 1) During planning phase; 2) Immediately prior to construction; and 3) After revenue service has had two years to mature. Key components of a Study include an evaluation of project score, capital costs, transit service levels, operations and maintenance costs, ridership and optional items, which for Omnitrans will include economic development impact on traffic.

Omnitrans contracted with Parsons Transportation Group to complete the before segment of the Study. This solicitation is intended to seek an independent consultant to complete the passenger and business surveys needed for the after study. Omnitrans staff will analyze the data from the resulting contract (after study) and compare the results to the 2011 data (before study) to complete the final segment of the Study.

In accordance with the Procurement Policy 2000, Section 2.3.5.1.3, Board authorization and use of a formal procurement procedure is required to release Request for Proposals for procurements

for goods/services exceeding \$100,000. The Independent Cost Estimate for this project is \$274,560, including options.

FUNDING SOURCES

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

FUNDING	GRANT	YEAR	PROJECT NAME	INTERNAL ORDER	AMOUNT
Prop 1B	Prop 1B	2008	sbX After Study	X09F00003P	\$274,560

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

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

CONCLUSION

By proceeding with this solicitation, Omnitrans will have the necessary data to complete its Before & After Study for the E-Street Corridor project.

PSG:JMS:CVM

ITEM # E11

DATE: September 7, 2016

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

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: AMENDMENT 2 - CONTRACT ITS16-07 TRANSITMASTER
HARDWARE UPGRADE AND TRAINING AND DISPOSITION OF 50
OBSOLETE IVLUs AND MDTs**

FORM MOTION

Authorize the CEO/General Manager to execute Amendment 2 to Sole Source Contract ITS16-07 with Trapeze Software Group of Cedar Rapids, IA, to reduce the labor cost to install Fixed Route Kits from 182 buses to 139 buses in the amount of \$47,300; add the installation of Fixed Route Kits on two (2) supervisor vehicles, six (6) stops and stations vehicles, and seven (7) training devices in the amount of \$52,300; and return twenty (20) new Fixed Route Kits for a credit of \$68,177, for a total net credit to the contract of \$68,177.00; and

Dispose of fifty obsolete Integrated Vehicle Logic Units (IVLU) and Mobile Display Terminals (MDT), with a trade-in value of \$5,000.

BACKGROUND

On July 1, 2015, Omnitrans' Board of Directors approved award of Sole Source Contract ITS16-07 with Trapeze to provide TransitMaster Hardware Upgrade and Training, to upgrade the fixed routes kits on 182 buses with the new Fixed Route Kits VI-IVLU and Touch MDT's in a not-to-exceed amount of \$1,764,715.83.

On June 1, 2016, Omnitrans Board of Directors approved Amendment 1 to Sole Source Contract ITS16-07 with Trapeze to provide TransitMaster Hardware Upgrade and Training, to upgrade the legacy radio and antennae equipment with the new equipment in the amount of \$507,932, with the option to upgrade Omnitrans' paratransit fleet for a total not-to-exceed amount of \$646,008.

Amendment 1 included labor for the installation of 182 New Fixed Route Kits. Of the authorized number of fixed route kits, only 139 have been installed as all new buses received since 2015 come equipped with the new Fixed Route Kits. Eight (8) of the 43 remaining

uninstalled new Fixed Route Kits will be placed in inventory as spares and the remaining twenty (20) will be returned for a credit of \$68,177. The original value for 20 IVLUs and MDTs is \$80,208, less a 15 percent restocking fee of \$12,031, leaves a total credit of \$68,177. An amount of \$47,300 of unused labor remains on Contract ITS16-07. This Amendment 2 applies a total of \$52,300 of unused labor costs and a trade in value of \$5,000 for fifty obsolete IVLU's and MDT's which have exceeded their useful life. This additional effort will add parts and labor for the installation of VI-IVLU's on two (2) supervisor vehicles, six (6) stops and stations vehicles, and seven (7) training bus-in-a-box devices.

In accordance with Omnitrans' Procurement Procedure 7040-1, Fixed Asset Management Disposition, disposition of assets valued at \$5,000 or less may be disposed of with the approval of the CEO/General Manager, and reported back to the Board of Directors.

In accordance with FTA Circular 4220.1F, Section VI-17, procurement by noncompetitive proposals may be used when the manufacturer is the sole provider of the items compatible with existing equipment/systems and when the equipment/systems are not interchangeable with similar parts and equipment from other manufacturers. Trapeze Software Group, Inc., is the Original Equipment Manufacturer (OEM), the sole manufacturer and seller of these parts.

A cost analysis was conducted on the installation of the fixed route kits. Price is deemed fair and reasonable as the quote of \$52,300 is \$3,910 less than the Independent Cost Estimate (ICE) of \$56,210.

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

FUNDING SOURCE

There is no additional cost associated with this effort.

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

CONCLUSION

By proceeding with this award, Omnitrans will reduce the number of Fixed Route Kit installations from 182 buses to 139 buses, accept a trade value of \$5,000, and install Fixed Route Kits on two (2) supervisor vehicles, six (6) stops and stations vehicles, and seven (7) training devices.

PSG:JMS:KT

**AMENDMENT 2
TO CONTRACT ITS16-07**

BETWEEN

OMNITRANS

AND

TRAPEZE SOFTWARE GROUP, INC.

TransitMaster Hardware Upgrade and Training

This Contract Amendment, effective _____ is entered into by and between Omnitrans (hereinafter called “Omnitrans”) and Trapeze Software Group, Inc. (hereinafter called “Contractor”).

RECITALS

WHEREAS:

- I. Omnitrans and Contractor have entered into Contract ITS16-07 on July 7, 2015 and;
- II. Omnitrans and Contractor amended the Contract under Amendment 1 to update recitals, add the Onboard Communication System Upgrade and Additional Integration, and increase the contract amount by \$507,932 for a new not-to-exceed amount of \$2,135,395.68 and;
- III. Omnitrans and Contractor hereby agree to amend the Contract under Amendment 2 to reduce the cost of vehicle installation labor from 182 vehicles to 139 vehicles, add the trade in of used equipment and add equipment and services for the installation of Fixed Route Kits on two (2) supervisor vehicles, six (6) stops and stations vehicles, and seven (7) training devices and return twenty (20) new Fixed Route Kits for a credit of \$68,177, for a new not-to-exceed amount of \$2,067,218.68.

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

- I. Contract Agreement title page **Contract Amount**, delete in its entirety and replace with:

Contract Amount: \$2,067,218.68.
- II. Contract Agreement, page 3, delete 3. Compensation in its entirety and replace with the following:

3. COMPENSATION

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

OMNITRANS' maximum cumulative payment obligation, excluding tax, shall not exceed Two Million, Sixty Seven Thousand, Two Hundred Eighteen Dollars and Sixty Eight Cents (\$2,067,218.68), 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.

- III. Attachment A – Scope of Work, II. SCOPE OF WORK, page 1, delete section 2. Legacy Training in its entirety and replace with the following:

2. Legacy Training

The lead time for delivery and installation for the 139 IVLU's will likely take up to six (6) months. Omnitrans would like to receive training on the existing IVLU's. This training will serve as a stop gap to enable us to fix failed IVLU's to ensure we maintain communication and tracking with our fixed route vehicles. This legacy training shall consist of two (2) days onsite for up to 12 people on troubleshooting, replacing and repairing the current onboard system equipment such as the Integrated Vehicle Logic Unit and Mobile Data Terminal (MDT).

- IV. Attachment A – Scope of Work, II. SCOPE OF WORK, page 1, delete section 3. IVLU Delivery and Installation of 182 units in its entirety and replace with the following:

3. IVLU Delivery and installation of 139 units

Trapeze shall ship and install ten (10) IVLU's. The IVLU's will be configured with the Omnitrans EEPROM bin file settings. These buses will be tested as specified below in the Testing and Acceptance section.

After the initial ten (10) vehicles are accepted Trapeze may proceed to install and deploy IVLU's, mutually agreed upon and scheduled by Trapeze and Omnitrans.

- A. Trapeze shall credit Omnitrans for the return of 50 used Celeron DOS IVLU and 50 used MDT's. Trapeze shall provide recycling, disposal and shipping of remaining equipment.

B. Hardware upgrade of two (2) Survey Vehicles

Trapeze shall upgrade the IVLU hardware in up to two (2) Survey Vehicles and install survey cable.

- i. Trapeze Responsibilities:
 - 1) Provide Trapeze or sub-contract resource(s) to upgrade the hardware in up to two (2) vehicles.
 - 2) Trapeze shall upgrade the hardware in vehicles that are available for installation within a consecutive two (2) day period and work hours that are mutually agreed upon with Omnitrans and for which hardware is available.
 - 3) Trapeze is responsible for labor, travel expenses and travel time onsite to complete the installation.
- ii. Omnitrans Responsibilities:
 - 1) Provide access to vehicles within a two (2) day period during work hours mutually agreed upon with Trapeze.
 - 2) Ensure all vehicles and equipment are in working order prior to the upgrade.
 - 3) Provide all VI equipment required for the installation.
 - 4) Provide survey cables.
 - 5) Provide authorized personnel to coordinate, witness and support acceptance testing with Trapeze personnel.

C. Installation of Survey Cables

Trapeze shall install up to thirteen (13) survey cables in Survey Vehicles which are equipped with VI IVLU/MDT hardware.

- i. Trapeze Responsibilities:
 - 1) Provide Trapeze or sub-contract resource(s) to install up to thirteen (13) Survey Vehicles with survey cables. Trapeze will install the cables in vehicles that are available for installation within a consecutive four (4) day period and during work hours that are mutually agreed upon with Omnitrans.
 - 2) Trapeze is responsible for labor, travel expenses and travel time onsite to complete the installation.

- ii. Omnitrans Responsibilities:
 - 1) Provide access to vehicles within a four (4) day period during work hours mutually agreed upon with Trapeze.
 - 2) Ensure all vehicles have been upgraded to VI IVLU/MDT
 - 3) Ensure all vehicles and equipment are in working prior to the addition of the survey cable.
 - 4) Provide authorized personnel to coordinate, witness and support acceptance testing with Trapeze personnel.

D. Installation of IVLUs and Tait radio in Stops & Stations Vehicles

Trapeze shall provide the labor to install up to six (6) F350 Stops and Stations vehicles for location tracking only (IVLU, radio/GPS, antenna, power and related parts). Installation does not include MDT, MDT mount, or voice communications equipment.

- i. Trapeze Responsibilities:
 - 1) Install up to six (6) F350 Stops & Stations vehicles for location tracking. Trapeze will install the IVLU, IVLU enclosure, power, radio, antenna, and related parts and cabling.
 - 2) Trapeze shall validate the IVLU can successfully transmit data.
 - 3) Trapeze is responsible for labor, travel expenses and travel time onsite to complete the installation.
- ii. Omnitrans Responsibilities:
 - 1) Provide access to vehicles within a four (4) day period during work hours mutually agreed upon with Trapeze.
 - 2) Ensure all vehicles and equipment are in working order prior to the installation.
 - 3) Provide authorized personnel to coordinate, witness and support acceptance testing with Trapeze personnel.
 - 4) All equipment shall be provided by Omnitrans.

E. Upgrade Bus In a Box with VI IVLU/MDT

Trapeze shall provide the labor to upgrade Omnitrans existing Bus in a Box (BIAB) systems with VI IVLU and MDTs.

- i. Trapeze Responsibilities:
 - 1) Labor to install up to seven (7) BIAB
- ii. Omnitrans Responsibilities:
 - 1) Provide access to BIAB within a three (3) day consecutive period
 - 2) Ensure all BIAB equipment is in working order prior to the installation.
 - 3) Provide authorized personnel to coordinate, witness and support acceptance testing with Trapeze personnel.
 - 4) All equipment shall be provided by Omnitrans.

F. Supporting Services

Trapeze shall provide the needed support resources for the execution of this change order including vehicle engineering resources for the F350 installation and project management resources.

- iii. Assumptions:
 - 1) It is Omnitrans' responsibility to ensure that all vehicles, equipment and parts, access to facilities and Omnitrans resources for acceptance are available when scheduled.
 - 2) Trapeze s complete all work in a maximum of 3 trips onsite.
 - 3) Any labor that cannot be completed due to unavailability of equipment, parts, personnel, or are in vehicles/equipment in non-working condition will not be subject to further trade.

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

IN WITNESS WHEREOF, the parties hereto have caused this Amendment 2 to be executed on the date shown below, and effective on the date first hereinabove written.

OMNITRANS

**TRAPEZE SOFTWARE GROUP,
INC.**

P. Scott Graham
CEO/General Manager

Printed Name:_____

Dated _____

Title:_____

Dated _____

Attachment:

Amendment 2, Revised Attachment C – Price, Payment Milestones and Deliverables

DP _____

CM _____

AMENDMENT 2, REVISED ATTACHMENT C - PRICE, PAYMENT MILESTONES, AND DELIVERABLES

ITS16-07

TRANSITMASTER HARDWARE UPGRADE AND TRAINING

PRICE		PAYMENT MILESTONES - ORIGINAL	
Application Software, Hardware and Services			
Description	Fixed Route TM Hardware Replacement (139 buses)	Milestone Description	Payment (% of Contract Value)
Implementation Services & Expenses	\$ 516,409.99	Submission of Vehicle Upgrade Project Plan	10%
Hardware (Less 20 Fixed Route Kits)	\$ 1,030,846.29	Submission of On-site Vehicle Survey Results	10%
15% Restocking Fee for return of 20 Fixed Route Kits	\$ 12,031.26	Shipment of 100 Fixed Route Kits	25%
Total	\$ 1,559,287.54	Shipment of 82 Fixed Route Kits (Less 20 Fixed Route Kits) = 62	20%
PRICING FOR HARDWARE AND SERVICES - AMENDMENT 1		Installation of 100 fixed route vehicles	20%
Fixed Route Mobile Radio and Antenna System Replacement		Installation of 39 fixed route vehicles	15%
Licenses	NA	Total	100%
Implementation Services & Expenses	\$ 129,033.36		
Hardware Total	\$ 254,156.00	PAYMENT MILESTONES - AMENDMENT 1	
Sales Tax at 8.25%	\$ 20,967.87		
Total	\$ 404,157.23	Milestone Description	Payment (% of Contract Value)
Fixed Route Farebox Integration		Submission of Vehicle Upgrade Project Plan	10%
Licenses	\$ 36,400.00	Submission of On-site Vehicle Survey Results	10%
Implementation Services & Expenses	NA	Shipment of 100 Fixed Route Kits	25%
Hardware Total	\$ 7,021.56	Shipment of 82 Fixed Route Kits	20%
Sales Tax at 8.25%	\$ 579.28	Installation of 100 fixed route vehicles	20%
Total	\$ 44,000.84	Installation of 82 fixed route vehicles	15%
Fixed Route Destination Sign Integration		Total	100%
Licenses	\$ 21,125.00		
Implementation Services & Expenses	\$ 23,829.00		
Hardware Total	\$ 13,690.58		
Sales Tax at 8.25%	\$ 1,129.47		
Total	\$ 59,774.05		
Optional: Paratransit Radio Installation			
Licenses	NA		
Implementation Services & Expenses	\$ 87,833.34		
Hardware Total	NA		
Sales Tax at 8.25%	NA		
Total	\$ 87,833.34		
TOTAL	\$ 595,765.46		
	\$ 2,067,219.00		

*

AMENDMENT 2, REVISED ATTACHMENT C - PRICE, PAYMENT MILESTONES, AND DELIVERABLES

ITS16-07

TRANSITMASTER HARDWARE UPGRADE AND TRAINING

DELIVERABLES

QTY	Part #	Description
6	31T0042-001	Fixed Route kit - Upgrade New Flyer vehicles from VE to VI IVLU and the Touch Mobile Data Terminal (MDT)
156	31T0042-002	Fixed Route kit - Upgrade remaining fleet from CI to VI IVLU and the Touch Mobile Data Terminal (MDT)
2	25T0276-001	RNC Computer, 2nd Generation: Crystal Group IS100 1U Ruggedized Workstation w/Intel Core i3-2120 3.30GHz processor, 2Gb DDR3 SDRAM (4GB x 1), 120Gb Solid State Disk Drive, CD/DVD-RW Drive, Mounting Rails, Windows 7 Professional 64-Bit
2	10T0462-001	RNC Modem Assembly (USB, 2nd Generation)
2	75T1051-006	Cable, 1 RNC Modem Assembly to 1 Motorola Quantar Base Station
4	75T1127-001	Cable, USB, Quantity 2, Radio Network Controller to RNC Modem Assembly, Type A to Type B, Length 2M
200	45T0061-002	Radio, Altered, Tait, Tm8105, 450-520Mhz, 40W
200	75T1004-003	Cable, W1B, Tait Tm8105 Ve/Vi Ivlu
200	24T0438-002	Antenna, Mobile, 450-470 Mhz, 3Db Gain, White
200	75T0145-001	Cable, Antenna Coax
200	24T0054-001	Conn, Mini,Uhf,Male
200	75T1146-002	Cable, Radio Comm Adaptor W/Cts & Rts
54	75T0368-020	Cable, J1708 To Twin Vision Destination Sign, 20'
115	75T0369-020	Cable, J1708 To Luminator/Hanover Sign, 20'
182	75T0417-025	Cable, J1708 Box To Fare Box
6	PN TBD	Cable Set, F350
6	75T0866-001	Cable, RF, NMO, Mount
6	24T0116-001	Antenna, 1/4 Wave, 450-470 MHz
6	75T1004-003	Cable, W'1B, Tait, TM8105 VE/VI IVLU
6	24T0054-001	Connector, Mini UHF, Male
15	75T0561-025	Survey Cable

*Rounded to the nearest dollar

ITEM # _____ E12 _____

DATE: September 7, 2016

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

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

SUBJECT: AUTHORIZE AWARD – CONTRACT MNT17-09, AUCTION SERVICES

FORM MOTION

Authorize the CEO/General Manager to award revenue Contract MNT17-09 to CHP Enterprises, Inc. dba Ken Porter Auctions of Carson, CA, for the provision of Auction Services for a three (3) year base period beginning September 2016, with the authority to exercise two (2) single option years, ending no later than September 2021.

BACKGROUND

Omnitrans may dispose of equipment after reaching the end of its useful life as defined by the Federal guidelines and the Fixed Asset Management Disposition section of Omnitrans' Procurement Policies & Procedures Manuals. Omnitrans is required to seek the fair market value for equipment upon disposal. The use of competitive sales or auctions is the recognized method for determining fair market value and is required by Omnitrans' Procurement Policy 7000.

On June 1, 2016, Omnitrans' Board of Directors authorized the release of Request for Proposals RFP-MNT17-09 for the provision of auction services to facilitate the disposal of Omnitrans' equipment. Notices were published in two local newspapers of general circulation and the solicitation was posted on Omnitrans' online bidding system. Four proposals were received by the July 6, 2016 deadline and all were deemed responsive.

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

Selection Criteria	Total Points Possible	CHP Enterprises, Inc. dba Ken Porter Auctions	The Auction Company	Bar None Enterprises, Inc.	Ritchie Bros. Auctioneers

Quality of Work Plan	40	32.00	29.33	30.67	30.67
Experience	35	30.33	23.33	25.67	26.83
Technical Score	75	62.33	52.66	56.34	57.50
Cost/Price	25	25.00	23.89	16.84	11.59
Totals	100	87.33	76.55	73.18	69.09

CHP Enterprises, Inc. dba Ken Porter Auctionsm, scored highest technically, offering auctions every two weeks, has in-house Department of Motor Vehicles (DMV) and transportation departments, and provides services for numerous transit agencies in the area, such as LAMTA, RTA, Foothill Transit, Santa Monica Big Blue, and Sunline Transit. Comments received from references indicate they are receiving good service, on time performance and a fair return on their disposed vehicles/equipment. For the vehicles, Ken Porter Auctions offers services at no cost to Omnitrans. For palletized items, Omnitrans will be charged a ten percent commission, which will be deducted from the auction proceeds.

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

FUNDING SOURCES

There is no budget related to this Agreement as any auctioneer's expenses will be deducted from auction proceeds with net proceeds sent to Omnitrans.

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

CONCLUSION

By proceeding with this award, Omnitrans will have the ability to ensure that it receives fair market value for its equipment upon disposal.

PSG:JMS:CVM



CONTRACT AGREEMENT

between

CHP Enterprises
dba Ken Porter Auctions
21140 S. Avalon Blvd.
Carson, CA 90745

(hereinafter "CONTRACTOR")
Contact: Gene Govoreau
Office (310) 353-7140
Cell: (310) 613-9501
Email: gene@kenporterauctions.com

And

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

CONTRACT DOCUMENTS

CONTRACT NO. MNT17-09

Auction Services

Contract Amount: \$N/A

Omnitrans Project Manager:

Name: Caroljo Mitcham
Title: Maintenance Fleet Analyst
Telephone: (909) 379-7181
Email: Caroljo.Mitcham@omnitrans.org

Contract Administrator:

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



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ATTACHMENT A – SCOPE OF WORK

ATTACHMENT B – REGULATORY REQUIREMENTS

ATTACHMENT C - PRICING

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

RECITALS

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

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

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

1. SCOPE OF WORK

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

2. PERIOD OF PERFORMANCE

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

Omnitrans' election to extend the Agreement beyond the Initial Term shall not diminish its right to terminate the Agreement for Omnitrans' convenience or CONTRACTORS default as provided elsewhere in this Agreement. The "maximum term" of this Agreement shall be the period extended from through _____ which period encompasses the Initial Term, Option Year One and Option Year Two

3. CONTRACT OPTIONS

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

4. COMPENSATION

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

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

5. INVOICING AND PAYMENT

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

CONTRACTOR shall submit invoices in duplicate to:

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

Accountspayable@omnitrans.org

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

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

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

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

C. TITLE

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

6. AUDIT AND INSPECTION OF RECORDS

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

7. NOTIFICATION

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

To OMNITRANS:

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

To CONTRACTOR:

Ken Porter Auctions
21140 S. Avalon Blvd.
Carson, CA 90745
Attn: Gene Govoreau
General Manager/Contract Manager

8. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES

A. OMNITRANS' Project Manager

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

Project Manager: Caroljo Mitcham, Maintenance Fleet Analyst.

- 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>
Ray Claridge	President
James Ido	Vice President/CFO
Gene Govoreau	General Manager/ Contract Manager

For complete List and resumes see Proposal Section E and F

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

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

9. DISPUTE RESOLUTION

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

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

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

10. TERMINATION FOR CONVENIENCE

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

11. TERMINATION FOR BREACH OF AGREEMENT

- A. If CONTRACTOR fails to perform any of the provisions of this Agreement or so fails to make progress as to endanger timely performance of this Agreement, OMNITRANS may give CONTRACTOR written notice of such default. If CONTRACTOR does not cure such default or provide a plan to cure such default which is acceptable to OMNITRANS within the time permitted by OMNITRANS, then OMNITRANS may terminate this Agreement due to CONTRACTOR's breach of this Agreement.
- B. If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then OMNITRANS may immediately terminate this Agreement.
- C. If CONTRACTOR violates Section 28, Compliance with Lobbying Policies, of this Agreement, then OMNITRANS may immediately terminate this Agreement.
- D. In the event OMNITRANS terminates this Agreement as provided in this Section, OMNITRANS may procure, upon such terms and in such manner as OMNITRANS may deem appropriate, Work similar in scope and level of effort to those so terminated, and CONTRACTOR shall be liable to OMNITRANS for all of its costs and damages, including, but not limited, any excess costs for such Work.
- E. All finished or unfinished documents and materials produced or procured under this Agreement shall become OMNITRANS' property upon date of such termination.

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

12. ASSIGNMENT

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

13. SUBCONTRACTING

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

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

14. INDEPENDENT CONTRACTOR

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

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

15. INSURANCE

A. INSURANCE REQUIREMENTS

1) General Requirements for Contractor

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

2) Deductibles or Self-Insured Retention (SIR)

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

3) Other Insurance Provisions

a. Commercial General Liability and Automobile Liability

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

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

b. Workers' Compensation

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

c. Care, Custody, and Control

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

4) Acceptability of Insurers

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

5) Verification of Coverage

- a. Contractor shall furnish Omnitrans with original endorsements affecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All insurance certificates and endorsements are to be received and approved by Omnitrans before work commences.
- b. As an alternative, Contractor's insurer may provide complete, certified copies of all required insurance policies, including

endorsements affecting the coverage required by these specifications.

- c. In lieu of purchasing insurance and providing original endorsements and or certificates of insurance, the Contractor may provide proof of self-insurance; such proof must be to the satisfaction of Omnitrans.

6) Subcontractors

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

7) Notification of Terminated Insurance

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

B. MINIMUM INSURANCE COVERAGE

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

- 10) ☐ All drivers making deliveries of products specified on this solicitation shall have Hazardous Materials Endorsements on their Commercial Drivers License, and such other Endorsements as may be required by relevant laws and/or regulations.

16. INDEMNITY

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

17. REVISIONS IN SCOPE OF WORK

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

18. RIGHTS IN TECHNICAL DATA

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

19. OWNERSHIP OF REPORTS AND DOCUMENTS

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

20. OWNERSHIP RIGHTS

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

21. WORK FOR HIRE

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

22. SUBMITTAL OF CLAIMS BY CONTRACTOR

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

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

23. EQUAL OPPORTUNITY

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

24. STANDARD OF PERFORMANCE

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

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

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

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

26. DISQUALIFYING POLITICAL CONTRIBUTIONS

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

27. COMPLIANCE WITH LAW

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

28. COMPLIANCE WITH LOBBYING POLICIES

- A. CONTRACTOR agrees that if it is a Lobbyist Employer or if it has retained a Lobbying Firm or Lobbyist, as such terms are defined by OMNITRANS

in its Ethics Policy, it shall comply or ensure that its Lobbying Firm and Lobbyist complies with OMNITRANS' Ethics Policy.

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

29. PUBLIC RECORDS ACT

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

30. WAIVER/INVALIDITY

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

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

31. FORCE MAJEURE

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

32. CONFIDENTIALITY

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

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

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

34. GOVERNING LAW

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

35. MODIFICATIONS TO AGREEMENT

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

36. LICENSING, PERMITS AND INSPECTION COSTS

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

37. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, and any and all of its Amendments, Appendices, Exhibits and Attachments; (2) provisions of RFP-MNT17-09 and any and all of its Addenda, Appendices, Exhibits and Attachments; and (3) CONTRACTOR's proposal dated July 6, 2016.

38. ENTIRE AGREEMENT

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

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

OMNITRANS

CONTRACTOR
Company Name:

P. Scott Graham
CEO/General Manager

Name: James Igo
Title: VICE PRESIDENT

Date

7/6/2016
Date

Federal Tax I.D. No.

JS

ATTACHMENT A – SCOPE OF WORK
MNT17-09, AUCTION SERVICES

1. INTRODUCTION

Contractor shall provide comprehensive auction services with no out-of-pocket expenses to be paid by Omnitrans.

2. STATEMENT OF WORK

Contractor's work shall include the following tasks:

A. General Scope of Work

- 1) Contractor must possess the necessary facilities, knowledge and abilities to provide auction services for all PROPERTY disposed of by Omnitrans' Director of Maintenance or his designated representative.
- 2) Contractor shall designate a point of contact to act as Contractor's representative regarding all aspects of the performance of this Agreement.
- 3) Definitions
 - a) For purposes of this Agreement, PROPERTY shall include, but is not limited to, the following: vehicles, heavy equipment, trucks, buses or other conveyances, bus parts, electronic equipment, furniture and other miscellaneous equipment.

B. Contractor's Responsibilities

- 1) Public Auction
 - a) Contractor must conduct a public auction.
 - b) None of the PROPERTY assigned to Contractor pursuant to this Agreement may be sold before the auction without prior written agreement of Omnitrans.
 - (1) Should both parties agree to a sale prior to auction, the proceeds of said sale shall be treated as part of the gross proceeds of the auction.
- 2) Performance Specifications
 - a) Arrange for PROPERTY to be picked up from Omnitrans' locations:
 - (1) PROPERTY may be picked up from either or all of these locations:
 - (a) 1700 West Fifth Street, San Bernardino, 92411
 - (b) 234 South I Street, San Bernardino, CA 92410
 - (c) 4748 Arrow Highway, Montclair, CA 91763
 - (2) Contractor or their designee shall work with Omnitrans to arrange an acceptable time for pickup. They shall provide valid drivers' license and proof of insurance.

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AUCTION SERVICES

- b) Store PROPERTY until sold
- c) Pre-auction publicity including advertisements
- d) Public viewing of items available for auction
- e) Recording of sales
- f) All auctions shall be open to the general public, and there shall be no fee charged for participation as a potential buyer.
- g) Sales of such PROPERTY shall be made only to the highest responsible bidder.
- h) Unless otherwise directed by Omnitrans' designated representative, Contractor shall reschedule all unsold PROPERTY to the next available auction, at no additional cost to Omnitrans.
- i) Contractor shall be responsible for loss or damage to PROPERTY during and after transport of said PROPERTY to the auction site through sale and transfer of possession to the new buyer.
- j) Contractor shall perform the following services in connection with the conducting of auctions for Omnitrans:
 - (1) Receive and protect all property consigned to contractor for disposal/sale.
 - (2) Contractor shall assume liability of PROPERTY at the time of pickup from Omnitrans.
 - (a) It is expected to have approximately 15 large buses and 5 smaller vehicles to auction each year.
 - (3) Contractor shall be responsible for maintaining each vehicle released to auction in the same or better condition than when it was received. In the event that PROPERTY is damaged, lost, stolen, or an accident occurs, Contractor shall either repair the PROPERTY at no cost to Omnitrans or pay Omnitrans the value of the PROPERTY at the time of the accident. Miscellaneous items shall also receive the same liability coverage PROPERTY.
 - (4) Inspect vehicles for any safety or maintenance needs. Wash and vacuum all cars and trucks prior to the auction date.
 - (5) Supply all needed personnel and set up all needed auction equipment and facilities.
 - (6) Ensure compliance with all pertinent provisions of the bulk sales laws and laws and regulations of the State of California, including but not necessarily limited to, obtaining all necessary licenses and permits, posting required bonds, payment of all fees and expenses.

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- (7) Contractor shall engage in a comprehensive advertising and marketing campaign in advance of each auction. Such campaigns shall include:
 - (a) Placing advertisements in major newspapers;
 - (b) Preparing, printing and distributing fliers and brochures on special interest PROPERTY;
 - (c) Placing advertisements in trade journals as well as national and international campaigns, when appropriate; and
- (8) Notify Omnitrans' Fleet Analyst two weeks prior to auction, via mail or e-mail, of auction dates for any Omnitrans' property being auctioned.
- (9) Register all bidders and issue bidder numbers. A valid California driver's license or other acceptable picture identification is required for no-fee registration.
- (10) Collect and process all deposits and proceeds.
- (11) Process all title work for vehicles and assure that all mandated inspections (smog, weight, etc.) have been obtained. Prepare this title work for a smooth transfer of ownership into the new buyer's name on the day of the sale, and any other required DMV forms (including, but not limited to Notice of Transfer and Release of Liability).
 - (a) Provide Omnitrans with proof of transfer and release of liability, with the California DMV.
- (12) Provide a detailed summary statement, "Final Auction Results," to Omnitrans Fleet Analyst accompanied by payment of those net proceeds of sale to Omnitrans no later than twenty-one (21) days after the auction date. Final accounting will include sale price, name and address of new owner, detailed accounting for other fees, and authorized expenses. Summary statements may be designed to fit consignor requirements.
- (13) Contractor to provide Omnitrans with a link to sales results of all sales, pending or other via the internet. The information shall include pricing, equipment description, and customer information
- (14) Contractor shall ensure that all PROPERTY is available for public inspection during normal working hours prior to the sale.
- (15) As requested by Omnitrans, Contractor shall arrange for transportation of all PROPERTY from Omnitrans'

possession to Contractor's auction facility. Such transportation shall be provided by Contractor's licensed and insured employees and/or subcontractors.

- (a) The fees for transporting all property, if any, shall be deducted from the auction proceeds.
- (16) As requested by Omnitrans, Contractor shall provide detailing services for the PROPERTY prior to the auction.
 - (a) The fees for detailing services, if any, shall be deducted from the auction proceeds.
- (17) As requested by Omnitrans and in compliance with the laws of the State of California, Contractor shall arrange for smog certification or a statement that vehicle does not meet smog requirements prior to sale.
 - (a) The fees for smog certification shall be deducted from the auction proceeds.
- (18) When requested by Omnitrans, Contractor shall arrange for PROPERTY repair or reconditioning. Contractor, upon direction of Omnitrans, will obtain price quotes, and upon receipt of written instructions from Omnitrans, shall have the necessary services performed.
 - (a) The fees for repair or reconditioning shall be deducted from the auction proceeds.

C. Omnitrans Responsibilities

In the operation of this Agreement, Omnitrans shall be responsible for the following:

- 1) Omnitrans shall provide, title or Certificate of Ownership and all other documents necessary to affect Transfer of Title for motor vehicles, trailers and vehicle equipment and other PROPERTY.
- 3) Submit to Contractor a list of PROPERTY to be released for sale. It is understood that minor changes in said list may be submitted to Contractor at any time prior to two (2) weeks in advance of the auction. Notwithstanding the foregoing, Omnitrans may withdraw PROPERTY from said list upon notice to Contractor five (5) days prior to auction.
- 4) Maintain any records considered necessary by Omnitrans other than those provided by the Contractor. Omnitrans will also provide Contractor such additional documents as Contractor may reasonably request in order to assist Contractor in performing its duties under the Agreement. Contractor shall provide Omnitrans such documents as Omnitrans may request to protect Omnitrans' rights under the consignment provisions of the Uniform Commercial Code and such other sales-related documentation not included in the reports otherwise provided Omnitrans.

- 5) Omnitrans warrants title to all PROPERTY to be unencumbered at the time of sale. All PROPERTY shall be sold “as is, where is” without any warranty by Omnitrans or Contractor as to condition or usability. This disclaimer shall be contained in all auction brochures and incorporated into the “Terms and Conditions of Sale” as well as on the sales invoice.

D. Additional Fees/Charges

- 1) Contractor may charge the successful bidder with a standard bidder’s premium.
 - a) Full disclosure of said charges shall be duly noted in advance of sale.

End Scope of Work

ATTACHMENT B

REGULATORY REQUIREMENTS

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

ITEM #E12	CONTRACT MNT17-09, AUCTION SERVICES
ITEM #F2	CONTRACT MNT17-08, WEST VALLEY HYDRAULIC VEHICLES LIFTS REPLACEMENT

Attachment B

REGULATORY REQUIREMENT

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REGULATORY REQUIREMENTS

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

RR-01

ADMINISTRATIVE CODE *

A. Applicability

This Article applies to all contracts.

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

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

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

C. Campaign Contributions

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

RR-02
DISCRIMINATION *

A. Applicability

This Article applies to all contracts.

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

RR-03
WHISTLEBLOWER REQUIREMENTS *

A. Applicability

This Article applies to all contracts.

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

RR-04
PUBLIC RECORDS ACT *

A. Applicability

This Article applies to all contracts.

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

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

RR-05

ACCESS TO RECORDS *

A. Applicability

This Article applies to all federally funded contracts.

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

RR-06

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

A. Applicability

This Article applies to all federally funded contracts.

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

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

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

RR-07

ENERGY CONSERVATION REQUIREMENTS

A. **Applicability**

This Article applies to all federally funded contracts.

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

RR-08

CIVIL RIGHTS REQUIREMENTS *

A. **Applicability**

This Article applies to all federally funded contracts.

- B. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42

U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Contractor shall comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

C. Equal Employment Opportunity

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

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

This Article applies to all federally funded contracts.

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

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

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

This Article applies to all federally funded contracts.

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

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

RR-11

SUSPENSION AND DEBARMENT*

A. Applicability

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

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

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

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

RR-12

RECYCLED PRODUCTS

A. Applicability

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

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

RR-13

CLEAN WATER AND CLEAN AIR REQUIREMENTS*

A. Applicability

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

B. CLEAN WATER REQUIREMENTS

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

C. CLEAN AIR

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

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

RR-14

COMPLIANCE WITH FEDERAL LOBBYING POLICY *

A. Applicability

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

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

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

RR-15

BUY AMERICA *

A. Applicability

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

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

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

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

RR-16

CARGO PREFERENCE*

A. Applicability

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

B. USE OF UNITED STATES FLAG VESSELS

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

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

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

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

RR-17 FLY AMERICA

A. Applicability

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

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

RR-18 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT *

A. Applicability

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

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

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

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DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26

Disadvantaged Business Enterprises

- A. This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 2.45%.
- B. Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Contract. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Omnitrans deems appropriate. Each subcontract Contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).
- C. Bidders are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following concurrent with and accompanying sealed bid concurrent with and accompanying an initial proposal prior to award:
 - 1. The names and addresses of DBE firms that will participate in this contract;
 - 2. A description of the work each DBE will perform;
 - 3. The dollar amount of the participation of each DBE firm participating;
 - 4. Written documentation of the bidder's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
 - 5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
 - 6. If the contract goal is not met, evidence of good faith efforts to do so.

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

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

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

RR-20

ADA ACCESS

A. Applicability

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

B. Access Requirements for Persons with Disabilities

Contractor shall comply with:

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

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

RR-21

ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM *

A. Applicability

This Article applies to federally funded contracts for transit operations.

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

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

C. Certificate of Compliance

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

D. Drug and Alcohol Testing Program

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

E. Alcohol and Drug Free Workplace Program

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

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TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS *

A. Applicability

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

B. General Transit Employee Protective Requirements

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

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

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

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

If FTA has determined that this Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, Contractor shall comply with the terms and conditions of the Special Warranty for the Nonurbanized Area

Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

E. Indemnity

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

**RR-23
BONDING REQUIREMENTS**

Applicability to Contracts

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

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

**RR-24
DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS**

Background and Application

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

incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

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

Clause Language

Davis-Bacon and Copeland Anti-Kickback Acts

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

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

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

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

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

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

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

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

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

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

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

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be

classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

(2) **Withholding** - Omnitrans shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, Omnitrans may, after written notice to

the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

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

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

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

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

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

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

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

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

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

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

paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

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

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

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

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

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PRIVACY ACT - 5 U.S.C. 552

Applicability to Contracts

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

Flow Down

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

Model Clause/Language

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

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

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

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

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

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

Applicability to Contracts

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

Flow Down

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

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

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

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

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

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

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

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

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

Applicability to Contracts

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

Flow Down

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

Model Clauses/Language

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

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

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

Applicability to Contracts

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

Flow Down

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

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

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

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

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

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

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

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VETERANS PREFERENCE

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

END OF REGULATORY REQUIREMENTS

ATTACHMENT C – PRICING

MNT17-09

AUCTION SERVICES

Contract Year / Description	Commission Rate	DMV Processing	Transportation Operational	Transportation Non-Operational
Base Year 1				
Buses	0%	\$0	\$0	\$0
Cars/Trucks/Vans	0%	\$0	\$0	\$0
Pallets of Miscellaneous	10%	\$0	\$0	\$0
Base Year 2				
Buses	0%	\$0	\$0	\$0
Cars/Trucks/Vans	0%	\$0	\$0	\$0
Pallets of Miscellaneous	10%	\$0	\$0	\$0
Base Year 3				
Buses	0%	\$0	\$0	\$0
Cars/Trucks/Vans	0%	\$0	\$0	\$0
Pallets of Miscellaneous	10%	\$0	\$0	\$0
Option Year 1				
Buses	0%	\$0	\$0	\$0
Cars/Trucks/Vans	0%	\$0	\$0	\$0
Pallets of Miscellaneous	10%	\$0	\$0	\$0
Option Year 2				
Buses	0%	\$0	\$0	\$0
Cars/Trucks/Vans	0%	\$0	\$0	\$0
Pallets of Miscellaneous	10%	\$0	\$0	\$0

FEDERAL GRANT

Redlands Passenger Rail Project gets \$8.6M

By Sandra Emerson

sandra.emerson@langnews.com
@TheFactsSandra on Twitter

REDLANDS » The project to bring passenger rail service to Redlands will receive a funding boost from the federal government.

The Department of Transportation has awarded the San Bernardino Associated Governments, or SanBAG, an \$8.6 million grant for the Redlands Passenger Rail Project.

"It helps secure the funding package for the project, but it also illustrates that the region is doing projects that are significant," said Tim Watkins, SanBAG's chief of legislative and public affairs. "We're excited about it."

On Thursday, Rep. Pete Aguilar, D-San Bernardino, announced the grant, which is through the Transportation Investment Gen-

GRANT » PAGE 5

Grant

FROM PAGE 1

erating Economic Recovery, or TIGER, grant program.

The Los Angeles County Metropolitan Transportation Authority, Bay Area Rapid Transit and city of Live Oak also were awarded TIGER grant funding.

This was SanBAG's third attempt at securing TIGER grant funding, but first time being awarded the grant, Watkins said.

The grant has project-wide applications, Watkins said, but how it will be used is still to be determined by the project team.

The project's \$250 million includes funding from the Measure I half-cent sales tax, state, federal and private funds. It is estimated to cost \$8 million to \$10 million annually to run the service.

"We're excited we can bring new dollars into the mix," Watkins said.

Aguilar, who advocated for the project to Transportation Secretary Anthony Foxx, said that the project is an important investment for the community.

"The RPRP will help spur economic development, ease traffic congestion and pollution and will make daily transportation for San Bernardino County families safer and more efficient," Aguilar said in the news release. "I'm glad to see this grant come through and commend SanBAG and our local leaders for their continued activism that helped make this possible."

Aguilar also, supported the project while serving as mayor of Redlands.

"I think it's another great example of SanBAG working very hard to find multiple funding sources to enable the project to be completed on time and on budget," Mayor Pro Tem Jon Harrison said. "I'm very appreciative of not only SanBAG but also Pete Aguilar's efforts to help identify and work with

federal agencies on it."

The Redlands Passenger Rail Project proposes to extend passenger rail 9 miles from downtown San Bernardino through Redlands.

Stations are proposed for Waterman Avenue, New York Street at Esri, downtown Redlands and the University of Redlands.

Construction is scheduled to begin in 2017, with operations starting in 2020.

In July, the SanBAG Board of Directors voted to seek proposals for vehicles to be used on the line.

SanBAG is proposing to run diesel multiple units, which are smaller, quieter, more energy efficient and cheaper to operate than a standard locomotive.

SanBAG is working on the branding of the future service.

"The project is making those next steps to get this much closer to a reality," Watkins said.

For more information, go to www.redlandsrailproject.org.

TRANSPORTATION

Rail to Redlands to hold meeting today

Working group will discuss SanBAG's Passenger Rail Project

By Sandra Emerson
semerson@seng.com
@TheFactsSandra on Twitter

REDLANDS » The Rail to Redlands working group will hold its first meeting in nearly a year to discuss the Redlands Passenger Rail Project.

The 90-minute meeting, led by San Bernardino County Supervisor James Ramos, begins at 2 p.m. today in the Esri Cafe, 380 New York St. in Redlands.

The working group, which brings together various public and private stakeholders, provides unofficial oversight for the project. San Bernardino Associated Governments, the lead agency on the project, plans to extend passenger rail service 9 miles from downtown San Bernardino to the University of Redlands.

The project has taken several steps toward construction since the working group's meeting in September 2015.

SanBAG staff will share the project's latest developments at today's meeting.

"Great progression has been achieved since the creation of the Redlands Working Group in May 2013.

"Residents and stakeholders have been kept updated on the development of the rail project," Ramos said in a news release from his office.

"When I first took office, one of my goals was to secure passenger rail service into Redlands. The advancement and forward direction of this project is partly due to the persistence of the Redlands Working Group in making sure the project flourishes in a timely manner."

The group's members include officials with the city of Redlands, University of Redlands, Esri and other organizations.

For more information, go to www.railtoredlands.org.

ITEM # _____ F1 _____

DATE: September 7, 2016

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

FROM: P. Scott Graham, CEO/General Manager

SUBJECT: CEO/GENERAL MANAGER'S REPORT

On 18 August, I attended the Redlands Rail Working Group, Chaired by Supervisor Ramos. An update was provided by SANBAG on the progress of the project, the visit to Austin, the pending release of the RFP for the Diesel Multiple Units (DMUs), and branding. Omnitrans has been given the lead from SANBAG in development of the proposed branding of the rail service.

On 10 August, a brief was provided to the City Managers and Planning staff of Ontario and Rancho Cucamonga on the proposed West Valley Connector branch alignment as it pertained to their cities. The West Valley Connector alignment proposed at that meeting was slightly amended at the Plans and Programs Committee meeting and subsequently recommended to the Board of Directors to proceed with project development (environmental and engineering). The item will be presented to the Board of Directors on 30 September.

PSG

ITEM # F2

DATE: September 7, 2016

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

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE AWARD – CONTRACT MNT17-08
WEST VALLEY HYDRAULIC VEHICLE LIFTS REPLACEMENT**

FORM MOTION

Authorize the CEO/General Manager to award Contract MNT17-08 to Autolift Services, Inc., of Los Alamitos, CA, for the provision of six (6) Hydraulic Bus Lifts and one (1) Vehicle Lift at the West Valley facility in the amount of \$1,288,435, plus a 12.5% percent contingency of \$161,054, and a 3.27% CAP in the amount of \$47,398, for a total not-to-exceed amount of \$1,496,887.

BACKGROUND

On June 1, 2016, Omnitrans' Board of Directors authorized the release of Invitation for Bids IFB-MNT17-08. Notices were published in two local newspapers of general circulation and posted on Omnitrans' online bidding system. Four (4) bids were received by the July 20, 2016 deadline, and all were deemed responsive and responsible.

Listed below are the bid prices from lowest to highest:

Company	Total*
Autolift Services, Inc.	\$1,288,435
Air & Lube System, Inc.	\$1,407,033
Kemcorp Construction, Inc.	\$2,086,312
Western Pump, Inc.	\$2,165,998

*Pricing inclusive of all direct and indirect costs.

Award is recommended to the lowest responsive and responsible bidder, Autolift Services, Inc., in the amount \$1,288,435. Price is deemed fair and reasonable as the bid of \$1,288,435 is \$745,252 less than the Independent Cost Estimate of \$2,033,687.

FUNDING SOURCE

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

FUNDING	GRANT #	YEAR	PROJECT NAME	INTERNAL ORDER	AMOUNT
FTA	CA-90-Z008	2013	WV Hoist	D1340314F	\$ 673,268
FTA	TBD FY16	2016	WV Hoist	D1640321F	\$ 524,482
STA	13-04-OMNB	2013	WV Hoist	D1340314S	\$ 168,317
Prop 1B	Prop 1B	2016	WV Hoist	D1640321B	\$ 130,820
Total					\$ 1,496,887

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

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

CONCLUSION

By proceeding with this award, Omnitrans will have the ability to ensure the safety and proper maintenance of Omnitrans' bus fleet.

PSG:JMS:KT



CONTRACT AGREEMENT

between

AUTOLIFT SERVICES, INC.
10764 Los Vaqueros Circle
Los Alamitos, CA 90720

(hereinafter "CONTRACTOR")
Telephone: (714) 816-9890
Email: autoliftservices@sbcglobal.net

And

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

CONTRACT DOCUMENTS

CONTRACT NO. MNT17-08

WEST VALLEY HYDRAULIC VEHICLE LIFTS REPLACEMENT

Contract Amount: \$1,288,435

Omnitrans Project Manager:

Name: Mark Montgomery
Title: Facilities Manager
Telephone: (909) 379-7175
Fax: (909) 885-2411
Email: mark.montgomery@omnitrans.org

Contract Administrator:

Name: Krystal Turner
Title: Contract Administrator
Telephone: (909) 379-7202
Fax: (909) 379-7402
Email: krystal.turner@omnitrans.org



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ATTACHMENTS:

ATTACHMENT A – TECHNICAL SPECIFICATIONS

ATTACHMENT B – REGULATORY REQUIREMENTS

ATTACHMENT C – PREVAILING WAGES

ATTACHMENT D – GENERAL PROVISIONS

ATTACHMENT E – SPECIAL PROVISIONS

This Agreement is made and entered into as of this 7th day of September, 2016 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and Autolift Services, Inc. (hereinafter referred to as "CONTRACTOR").

RECITALS

WHEREAS, OMNITRANS is a joint powers authority organized under Sections 6500 et seq. of the California Government Code 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, Technical Specifications 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 August 31, 2017, unless terminated as specified in Section 10 and 11 of this Agreement. Omnitrans has no obligation to purchase any specified amount of products/services. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

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

3. CONTRACT OPTIONS

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

4. COMPENSATION

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

LUMP SUM.....\$1,288,435

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed One Million, Two Hundred Eighty Eight Thousand, Four Hundred and Thirty Five Dollars (\$1,288,435), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

5. INVOICING AND PAYMENT

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

CONTRACTOR shall submit invoices in duplicate to:

OMNITRANS
1700 West Fifth Street
San Bernardino, CA 92411
Attn: Accounts Payable
Accountspayable@omnitrans.org

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

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

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

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

C. TITLE

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

6. AUDIT AND INSPECTION OF RECORDS

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

7. NOTIFICATION

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

To OMNITRANS:

Omnitrans
1700 West Fifth Street
San Bernardino, CA 92411
Attn: Krystal Turner
(909) 379-7202
Krystal.turner@omnitrans.org

To CONTRACTOR:

Autolift Services, Inc.
10764 Los Vaqueros Circle
Los Alamitos, CA 90720
Attn: Kyle Woodson
(714) 816-9890
kyle@autoliftservices.com

8. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES

A. OMNITRANS' Project Manager

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

Project Manager: 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>
Chris Woodson	Owner
Robin Woodson	CFO/ Secretary
Cody Woodson	Construction Superintendent
Kyle Woodson	Sales & Service

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

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

9. DISPUTE RESOLUTION

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

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

10. TERMINATION FOR CONVENIENCE

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

11. TERMINATION FOR BREACH OF AGREEMENT

- A. If CONTRACTOR fails to perform any of the provisions of this Agreement or so fails to make progress as to endanger timely performance of this Agreement, OMNITRANS may give CONTRACTOR written notice of such default. If CONTRACTOR does not cure such default or provide a plan to cure such default which is acceptable to OMNITRANS within the time permitted by OMNITRANS, then OMNITRANS may terminate this Agreement due to CONTRACTOR's breach of this Agreement.
- B. If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then OMNITRANS may immediately terminate this Agreement.
- C. If CONTRACTOR violates Section 28, Compliance with Lobbying Policies, of this Agreement, then OMNITRANS may immediately terminate this Agreement.
- D. In the event OMNITRANS terminates this Agreement as provided in this Section, OMNITRANS may procure, upon such terms and in such manner as OMNITRANS may deem appropriate, Work similar in scope and level of effort to those so terminated, and CONTRACTOR shall be liable to OMNITRANS for all of its costs and damages, including, but not limited, any excess costs for such Work.
- E. All finished or unfinished documents and materials produced or procured under this Agreement shall become OMNITRANS' property upon date of such termination.
- F. If, after notice of termination of this Agreement under the provisions of this Section, it is determined for any reason that CONTRACTOR was not in default under the provisions of this Section, or that the default was excusable under the terms of this Agreement, the rights and obligations of

the parties shall be the same as if the notice of termination had been issued pursuant to Section 10, Termination for Convenience.

- G. The rights and remedies of OMNITRANS provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

12. ASSIGNMENT

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

13. SUBCONTRACTING

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

Subcontractor's Name and Address	Work to Be Performed
KC Backhoe, Inc. 3113 Half Circle Road Norco, CA 92860	Demolition
Hof & Yates Rebar, Inc. 3254 Cherry Avenue Long Beach, CA 90807	Rebar
Full Blast Concrete Cutting, Inc. 204 S. Richman Avenue Fullerton, CA 92832	Concrete Cutting
Delta Electric 17007 Strawberry Pine Ct. Santa Clarita, CA 91387	Electric

14. INDEPENDENT CONTRACTOR

CONTRACTOR's relationship to OMNITRANS in the performance of this Agreement is that of an independent Contractor. CONTRACTOR's personnel

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

15. INSURANCE

A. INSURANCE REQUIREMENTS

1) General Requirements for Contractor

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

2) Deductibles or Self-Insured Retention (SIR)

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

3) Other Insurance Provisions

a. Commercial General Liability and Automobile Liability

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

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

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

b. Workers' Compensation

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

c. Care, Custody, and Control

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

4) Acceptability of Insurers

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

5) Verification of Coverage

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

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

6) Subcontractors

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

7) Notification of Terminated Insurance

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

B. MINIMUM INSURANCE COVERAGE

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

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

16. INDEMNITY

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

17. REVISIONS IN SCOPE OF WORK

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

18. RIGHTS IN TECHNICAL DATA

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

of OMNITRANS. The provisions of this paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.

19. OWNERSHIP OF REPORTS AND DOCUMENTS

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

20. OWNERSHIP RIGHTS

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

Documentation shall be governed by the License Agreement by and between the parties of event date herewith.

21. WORK FOR HIRE

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

22. SUBMITTAL OF CLAIMS BY CONTRACTOR

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

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

23. EQUAL OPPORTUNITY

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

24. STANDARD OF PERFORMANCE

A. CONTRACTOR shall perform and exercise, and require its subcontractors to perform and exercise due professional care and competence in the performance of the Work in accordance with the requirements of this Agreement. CONTRACTOR shall be responsible for the professional quality, technical accuracy, completeness and coordination of the Work, it being understood that OMNITRANS will be relying upon such professional quality, accuracy, completeness and coordination in utilizing the Work. The foregoing obligations and standards shall constitute the “Standard of Performance” for purposes of this Agreement. The provisions of this

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

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

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

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

26. DISQUALIFYING POLITICAL CONTRIBUTIONS

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

27. COMPLIANCE WITH LAW

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

28. COMPLIANCE WITH LOBBYING POLICIES

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

29. PUBLIC RECORDS ACT

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

30. WAIVER/INVALIDITY

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

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

31. FORCE MAJEURE

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

32. CONFIDENTIALITY

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

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

- A. OMNITRANS shall review and approve in writing all OMNITRANS related copy proposed to be used by CONTRACTOR for advertising or public relations purposes prior to publication. CONTRACTOR shall not allow OMNITRANS related copy to be published in its advertisements and public relations programs prior to receiving such approval. CONTRACTOR shall ensure that all published information is factual and that it does not in any way imply that OMNITRANS endorses CONTRACTOR's firm, service, and/or product.
- B. CONTRACTOR shall refer all inquiries from the news media to OMNITRANS, and shall comply with the procedures of OMNITRANS' Public Affairs staff regarding statements to the media relating to this Agreement or the Work.

- C. If CONTRACTOR receives a complaint from a citizen or the community, CONTRACTOR shall inform OMNITRANS as soon as possible and inform OMNITRANS of any action taken to alleviate the situation.
- D. The provisions of this Article shall survive the termination or expiration of this Agreement.

34. GOVERNING LAW

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

35. MODIFICATIONS TO AGREEMENT

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

36. LICENSING, PERMITS AND INSPECTION COSTS

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

conditions thereof and with all lawful orders and regulations of each such public agency relating to construction operations under the jurisdiction of such agency.

37. PRECEDENCE

A. Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence:

- 1) Change Orders and Modification after execution of Agreement
- 2) Agreement including all exhibits, attachments, appendices, Supplements and Addenda reference therein, with later Addenda having priority over earlier Addenda
- 3) Permit and Permit Documents
- 4) Technical Specifications
- 5) Drawings and Plans
- 6) Special Provisions
- 7) General Provisions

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

38. ENTIRE AGREEMENT

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

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

OMNITRANS

AUTOLIFT SERVICES, INC.

P. SCOTT GRAHAM
CEO/General Manager

ROBIN WOODSON
CFO/ Secretary

DATE

Federal Tax I.D. No. 75-3056929

DP__

CM__



**ITEM #F2
AUTHORIZE AWARD
CONTRACT MNT17-08
WEST VALLEY HYDRAULIC VEHICLE LIFTS
REPLACEMENT**

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

**TECHNICAL SPECIFICATIONS/DRAWINGS
PREVAILING WAGES
GENERAL PROVISIONS
SPECIAL PROVISIONS**

SEPTEMBER 7, 2016

ITEM # _____ F3 _____

DATE: September 7, 2016

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

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE AWARD – CONTRACT OPS17-07
110 TABLETS AND A SHARED CELLULAR DATA PLAN**

FORM MOTION

Authorize the CEO/General Manager to award Contract OPS17-07 to Cellco Partnership dba Verizon Wireless (Cellco), of Basking Ridge, NJ, for the provision of a Shared Cellular Data Plan for a two year base period beginning September 2016 and ending no later than September 2018, for a total not-to-exceed amount of \$50,470.

Authorize the CEO/General Manager to award a Purchase Order to CherryStoneIT, Inc. of Huntington Beach, CA, for the provision of 110 Tablets and associated hardware in the amount of \$56,087.

BACKGROUND

On April 6, 2016, the Board of Directors approved Amendment 5 to Sole Source Contract OPS16-107 with Trapeze Software Group, Inc. to add Trapeze DriverMate application software. DriverMate will replace the TransitMaster system IVLUs (Integrated Vehicle Logic Units), the GPS (Global Positioning System), and radio antennae for paratransit services. DriverMate requires Android™ compatible tablets, mounting brackets, and a shared cellular data plan to operate.

On May 4, 2016, Omnitrans' Board of Directors authorized the release of Invitation for Bids IFB-OPS17-07. Notices were published in two local newspapers of general circulation and posted on Omnitrans' online bidding system. Four (4) bids were received by the June 16, 2016 deadline.

Bidders submitted service level agreements. These agreements require negotiation of the terms and conditions. Therefore, the Invitation for Bids was cancelled and re-issued as a Request for Proposals which allows for negotiations of terms and conditions. RFP-OPS17-07 was re-

released on July 5, 2016. Three (3) proposals were received by the July 19, 2016 deadline, and all were deemed responsive and responsible.

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

Selection Criteria	Total Points Possible	Cellco	CherryStone IT, Inc.	T-Mobile
Overall Understanding of Agency needs	15	10.75	11.25	8.00
Quality of Work Plan	40	28.00	30.00	22.67
Experience	30	26.00	24.00	24.00
Technical Score	85	64.75	65.25	54.67
Cost/Price – Tablets and Mounting Hardware	7	0.73	7.00	0.00
Cost/Price – Data Plan	8	3.56	0.00	8.00
Totals	100	69.04	72.25	62.67

The maximum points allowed for the cost/price selection criteria were 15 points and were distributed at seven (7) points for tablets and vehicle mounting kits and eight (8) points for shared cellular data plan and the SOTI Enterprise Mobility Management Software (SOTI). The SOTI application will be used to manage the tablet solution for Omnitrans' Access vehicles. Omnitrans accepted proposals for single line items or multiple line items. Firms electing not to propose on items received 0 points.

CherryStoneIT, Inc. was the sole proposer for vehicle mounting kits and SOTI Enterprise Mobility Management software. In accordance with FTA Circular 4220.1F, and Omnitrans Procurement Procedure 4050.1, Section 5, awarding a contract in response to a single bid is allowed when it can be determined that the lack of competition was not due to unfavorable terms and conditions or unduly restrictive scopes of work or technical specifications. Staff conducted extensive outreach and was unable to identify sources willing to bid vehicle mounting kits and SOTI Enterprise Mobility Management software.

Cellco received the highest technical score for the shared cellular data plan and was agreeable to a split award.

The recommended combined pricing of \$106,557 is \$26,568 less than the Independent Cost Estimate of \$133,125 and 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 Operations Department's Capital Budget as follows:

FUNDING	GRANT #	YEAR	PROJECT NAME	INTERNAL ORDER	AMOUNT
FTA	CA-90-Z112	2014	DriverMate	A1420401F	\$ 85,246
Prop 1B	Prop 1B	2014	DriverMate	A1420401B	\$ 21,311
Total					\$ 106,557

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

Short Range Transit Plan/Strategic Initiative Supported – Strategic Initiative 5 – Technology Optimization.

CONCLUSION

By proceeding with this award, Omnitrans will have the ability to improve productivity and provide better service to paratransit passengers.

PSG:JMS:KT



NASPO ValuePoint (formerly known as WSCA) #1907
AUTHORIZED USER AGREEMENT

Verizon Wireless ("Vendor") and the State of Nevada, for itself and on behalf of the NASPO ValuePoint ("NASPO ValuePoint" and/or "Customer"), have entered into a Contract for Services of Independent Contractor #1907 ("Contract") with an effective date beginning on April 16, 2012 through and including June 30, 2019 and any and all amendments and/or addenda thereto. Pursuant to the Contract, the State of _____ has entered into a Participating Addendum ("PA") designating _____, a government entity, not for profit entity or a private education entity as an authorized user ("Authorized User").

In accordance with the definitions, terms and conditions set forth in the Contract and/or PA, the authorized entity may purchase wireless services and products under the terms, conditions, and pricing established by the Contract and/or PA for Authorized User participation. Participation is further subject to any and all applicable state and local purchasing statutes and ordinances. The Authorized User states, acknowledges and agrees, as follows:

- (1) It is an Authorized User as defined under the terms of the Contract and/or PA;
- (2) Authorized User is eligible and desires to purchase wireless services and products from Vendor pursuant to the terms and conditions of the Contract, PA, User Agreement, any and all amendments, addenda and schedules as the Customer may specify from time to time, as well as the terms and conditions of all calling plans activated under this User Agreement, which are incorporated herein by reference;
- (3) Authorized User will provide documentation and substantiate Authorized User status as appropriate and as requested from time to time by Vendor;
- (4) The Authorized User agrees to the terms and conditions of the NASPO ValuePoint Master Agreement including the disclosure of limited account information as part of the contractual reporting requirements to NASPO ValuePoint Administration and the participating state;
- (5) Authorized User will ensure that this User Agreement will be used only in support of government, not for profit or private education business;
- (6) The undersigned represents and warrants that he/she has the power and authority to execute this User Agreement, bind the respective Authorized User, and that the execution and performance of this User Agreement has been duly authorized by all necessary Authorized User action; and
- (7) The undersigned is duly authorized by the Authorized User to designate the following individual(s) (the "Authorized Contacts") who are authorized to take action with respect to the account with Vendor to purchase equipment, add lines of service, cancel lines of service and make changes to the account that financially bind the Authorized User to the terms and conditions of this User Agreement, the Contract, the PA, and execute Customer Agreements for the lines of wireless service, subject to the additional terms and conditions therein.

Customer Address:

Customer Phone number:

Customer Email address:

Authorized Signature:

Name:

Title:

Date:
