



**BOARD OF DIRECTORS  
DECEMBER 4, 2019  
SUPPLEMENTAL INFORMATION**

<b>ITEM #E7</b>	<b>PARTS WASHER SERVICE</b>
<b>ITEM #E8</b>	<b>INFORMATION TECHNOLOGY (IT) HARDWARE</b>
<b>ITEM #F6</b>	<b>THREE PAIRS OF FREQUENCY CHANNELS</b>

**ATTACHMENT A – SCOPE OF WORK**  
**MNT20-40**  
**PARTS WASHER SERVICE**

**1. GENERAL REQUIREMENTS**

a) General Information

Contractor shall provide service for fourteen parts washers owned by Omnitrans. These parts washers are located at Omnitrans' San Bernardino (East Valley) and Montclair (West Valley) facilities. The San Bernardino facility operates nine (9) washers manufactured by BIOCLEAR, Model B2000 and the Montclair facility operates five (5) washers manufactured by BIOCLEAR, Model B2000.

b) Locations:

Omnitrans (East Valley)  
1700 W. 5th St.  
San Bernardino, CA 92411

Omnitrans (West Valley)  
4748 Arrow Hwy  
Montclair CA 91763

**2. SCOPE OF WORK**

Contractor shall provide all necessary equipment to service the parts washers, including solvents and all parts and labor necessary to service the agency owned parts washers. Contractor shall provide preventative maintenance on a five week basis (periodic actions that serve to prevent failures, i.e., cleaning, inspection) and corrective maintenance (correct failures).

a) All added parts or equipment shall be new; no used or refurbished parts.

b) Contractor shall provide preventative maintenance on all parts washers at least once every five (5) weeks at both locations.

c) Maintenance shall include, but not be limited to:

- 1) Removal and replenishment of solution
- 2) Cleaning
- 3) Damage inspection
- 4) Test for proper operation
- 5) Filter replacement
- 6) Waste Disposal (offsite, in accordance with State and Local regulations)

- d) Equipment specifications: Omnitrans owns (14) Portable Units Manufactured by BIOCLEANI, Model B-2000) below:
  - 1) 20 gallon capacity
  - 2) Non-adjustable heaters
  - 3) Heating elements non-corroding sheathing with thermostat
  - 4) High density structure strength polyethylene or metal construction
  - 5) Re-circulating pump
  - 6) Liquid level sensor
  - 7) Adjustable timer for pumps and heaters
  - 8) Faucet
  - 9) Flow-thru brush
  - 10) Drain tray
  - 11) Removable lids
  - 12) Work Height – Approx. 35 -45 inches
  - 13) Sink Width – Approx. 30 -35 inches
  - 14) Sink Depth – Approx. 7-12 inches
  - 15) Voltage – 120 VAC 60 Hz
- e) Cleaner/Degreaser shall be an aqueous cleaner developed to clean grease, oil, lubricants and other organic soils. Contractor must supply any update(s) of the Safety Data Sheet (SDS).

### **3. WARRANTY**

- a) Contractor warrants that any parts/equipment installed under this contract shall be in good working order shall conform to the Manufacturer's published specifications.
- b) Contractor shall make all adjustments, repairs, and parts replacement necessary to maintain the equipment in its current condition.
- c) Contractor shall furnish all maintenance service and repairs for a period up to five years.
- d) All replaced parts shall become the property of Omnitrans.

### **4. INSTALLATION AND DELIVERY DATES**

- a) Contractor shall service installed parts washers within thirty days of issuance of Notice to Proceed.
- b) Contractor must specify in writing the time required to service Omnitrans owned equipment.

- c) Contractor must determine that the equipment is ready for use, and operates in conformance with Manufacturers published specifications.

## **5. CONTRACTOR PERSONNEL**

### **a) Control and Supervision**

The services provided by Contractor to accomplish the Scope of Work shall remain under the control, management, and supervision of Contractor.

### **b) Personnel**

- 1) Contractor shall provide technically competent personnel to accomplish the tasks prescribed in the Contract and the Bid. Contractor Personnel must follow all rules and regulations as required of Omnitrans Personnel, including but not limited to: no use of cell phones in the bus yards, safety vests to be worn at all times on Omnitrans properties, safety shoes and personnel protective equipment as required, and all applicable environmental regulations according to aqueous products used
- 2) Contractor personnel must perform their duties on the premises of Omnitrans, during Omnitrans' regular work days, Monday through Friday, between the hours of 6:00 a.m. and 5:00 p.m., except as may be specifically agreed to otherwise by Omnitrans.
- 3) If a Contractors' employee is unable to perform due to illness, resignation, or other factors beyond Contractor's control, Contractor will make every reasonable effort to provide suitable substitute personnel.
- 4) Contractor must manage all waste within its own waste disposal EPA and Manifest numbers, the waste cannot be dumped into Omnitrans waste stream.

## **6. SECURITY & EMERGENCY PREPAREDNESS**

### **a) Contractor, Sub-Contractors, and other people working on this contract shall ensure the following Security & Emergency Preparedness requirements are met:**

#### **1) Emergency Preparedness**

- a. Contractor shall ensure that all exit routes are kept free and unobstructed with no material or equipment placed, either permanent or temporary, within the exit route.
- b. Aisles, walkways and emergency exits shall be kept clear for egress.
- c. First aid supplies shall be readily available for contractors, sub-contractors, etc.

#### **2) Security**

- a. If Contractor is issued an Agency Contractor's badge it shall be worn so that it is visible to others.
- b. Secure doors shall not be propped open unless authorized by the Safety and Security Office.

- c. If any security equipment (card readers, CCTV cameras, etc.) are rendered nonfunctioning either by accident or due to project scope, the Safety and Security Office shall be immediately contacted.
- d. Suspicious Packages, Suspicious Objects, Suspicious People, Suspicious Photography, etc. shall be immediately reported to an on duty Omnitrans Security Officer or a member of the Safety and Security Office.
- e. Photographing and security equipment is not permitted without the written consent of the Safety and Security Office.

## **7. GENERAL HEALTH, SAFETY, & ENVIRONMENTAL REQUIREMENTS**

- a) Contractor, its subcontractors, suppliers, and employees have the obligation to comply with all Omnitrans health, safety, security and environmental compliance requirements and bus yard safety rules, as well as all federal, state, and local regulations pertaining to scope of work or agreements with Omnitrans.
- b) Contractor shall specifically acknowledge that it has primary responsibility to prevent and correct all health, safety, and environmental hazards for which it and its employees, or its subcontractors (and their employees) are responsible. The Contractor shall further acknowledge their expertise in recognition and prevention of hazards in the operations for which they are responsible, that Omnitrans may not have such expertise, and is relying upon the Contractor for such expertise. Omnitrans Project and Safety Manager retains the right to notify the Contractor of potential hazards and request the Contractor to evaluate and, as necessary, to eliminate those hazards.
- c) Contractor shall provide all necessary tools, equipment, and related safety protective devices to execute the scope of work in compliance with the Omnitrans' Health and Safety requirements, CCR Title 8 Standards, and recognized safe work practices.
- d) Contractor shall instruct all its employees, and all associated sub-contractors under contract with the Contractor who works on Omnitrans projects in the following; recognition, identification, and avoidance of unsafe acts and/or conditions applicable to its work.
- e) Omnitrans Project Manager/s shall be responsible to ensure a safety orientation is conducted of known potential hazards and emergency procedures for all Contractor personnel, subcontractors, suppliers, vendors, and new employees assigned to the project prior to commencement of the project.
- f) Contractor shall ensure that all Contractor vehicles, including those of its subcontractors, suppliers, vendors and employees are parked in designated parking areas, and comply with traffic routes, and posted traffic signs in areas other than the employee parking lots.

## **END OF SCOPE OF WORK**

# **Attachment B**

## **REGULATORY REQUIREMENT**

### **Table of Contents**

#### **Contents**

NO FEDERAL OBLIGATION TO THIRD PARTIES .....	2
FALSE OR FRAUDULENT STATEMENTS OR CLAIMS – CIVIL AND CRIMINAL FRAUD .....	2
ACCESS TO THIRD PARTY CONTRACT RECORDS .....	3
FEDERAL FUNDING, INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS, AND FEDERAL CHANGES .....	4
CIVIL RIGHTS REQUIREMENTS (TITLE VI, ADA, EEO (EXCEPT SPECIAL DOL CONSTRUCTION CLAUSE).....	4
DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26 .....	5
TERMINATION 49 U.S.C. Part 18 FTA Circular 4220.1F.....	7
SUSPENSION AND DEBARMENT.....	8
CLEAN WATER AND CLEAN AIR REQUIREMENTS .....	9
BREACHES AND DISPUTE RESOLUTION 49 CFR Part 18 FTA Circular 4220.1F .....	10
ENERGY CONSERVATION REQUIREMENTS .....	11
RECYCLED PRODUCTS .....	11
ADMINISTRATIVE CODE .....	12
DISCRIMINATION .....	13
WHISTLEBLOWER REQUIREMENTS .....	13
PUBLIC RECORDS ACT .....	13
PRIVACY ACT - 5 U.S.C. 552.....	14
VETERANS PREFERENCE .....	15

## **REGULATORY REQUIREMENTS**

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

### **Required Clauses for All FTA-Assisted Third-Party Contracts and Subcontracts**

#### **RR-01**

##### **NO FEDERAL OBLIGATION TO THIRD PARTIES \***

In connection with the Project, the Recipient agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, lessee, third party contractor, or other participant at any tier of the Project, or other person or entity that is not a party to the Grant Agreement or Cooperative Agreement for the Project. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, subagreement, lease, third party contract, or arrangement at any tier, the Federal Government has no obligations or liabilities to any entity other than the Recipient, including any subrecipient, lessee, third party contractor, or other participant at any tier of the Project.

#### **RR-02**

##### **FALSE OR FRAUDULENT STATEMENTS OR CLAIMS – CIVIL AND CRIMINAL FRAUD \***

###### **A. Civil Fraud.**

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, apply to the Recipient's activities in connection with the Project. By executing the Grant Agreement or Cooperative Agreement for the Project, the Recipient certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the Recipient the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.

###### **B. Criminal Fraud.**

If the Recipient makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the Recipient

the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001, or other applicable Federal law to the extent the Federal Government deems appropriate.

- C. 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-03**

#### **ACCESS TO THIRD PARTY CONTRACT RECORDS \***

- A. Access to Third Party Contract Records.  
The Recipient agrees to require, and assures that its subrecipients require, their third party contractors and third party subcontractors at each tier to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all third party contract records as required by 49 U.S.C. § 5325(g). The Recipient further agrees to require, and assures that its subrecipients require, their third party contractors and third party subcontractors, at each tier, to provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure proper Project management as determined by FTA.

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.

- B. 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.
- C. 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-04**  
**FEDERAL FUNDING, INCORPORATION OF FEDERAL TRANSIT**  
**ADMINISTRATION (FTA) TERMS, AND FEDERAL CHANGES**

- A. 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.
- B. 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-05**  
**CIVIL RIGHTS REQUIREMENTS (TITLE VI, ADA, EEO (EXCEPT SPECIAL DOL**  
**CONSTRUCTION CLAUSE \***

- A. 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.
- B. 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-06**  
**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 agency's overall goal for DBE participation is 1%.
- 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.

# **Required Clauses for Awards Exceeding \$10,000**

**RR-07**

**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.

## **Required Clauses for Awards Exceeding \$25,000**

### **RR-08**

#### **SUSPENSION AND DEBARMENT\***

- A. 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.

- B. 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.

## **Awards Exceeding \$100,000 by Statute**

### **RR-09 COMPLIANCE WITH FEDERAL LOBBYING POLICY \***

- A. 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-010 CLEAN WATER AND CLEAN AIR REQUIREMENTS\***

#### **A. 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.

#### **B. 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-011**

### **NON-CONSTRUCTION ACTIVITIES**

Activities Not Involving Construction. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, and other participant at any tier of the Project, with the employee protection requirements for nonconstruction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with implementing U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5.

## **Required Clauses for Awards Exceeding the Simplified Acquisition Threshold (\$150,000)**

### **RR-012**

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

##### **Applicability to Contracts**

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

##### **Flow Down**

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

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

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

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

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

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

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

## **MISCELLANEOUS SPECIAL REQUIREMENTS**

### **RR-013 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-014 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.

## **NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS**

To the extent applicable, the Recipient agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and follow the provisions of FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

### **RR-015**

## **NOT INCLUDED IN UPDATED POLICY**

### **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**

### **PRIVACY ACT - 5 U.S.C. 552**

#### **Applicability to Contracts**

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

#### **Flow Down**

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

#### **Model Clause/Language**

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

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

- (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of

that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

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

#### **RR-06**

##### **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  
MNT20-40  
F.R.S. Environmental, Inc.

<u>Service</u>	<u>Year One</u>	<u>Year Two</u>	<u>Year Three</u>
Service (14) Parts Washers per Attachment A	\$22,260	\$22,260	\$22,260

<u>Option Year Pricing</u>	<u>Year One</u>	<u>Year Two</u>
	\$22,260	\$22,260



## PERSONNEL POLICY MANUAL

POLICY 707 PAGE 1 OF 6

SUBJECT  
**PROHIBITING WEAPONS IN THE WORKPLACE**

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: June 7, 2017

### **I. Purpose**

It is the policy of Omnitrans to maintain a work environment that is safe for all persons, including the community, and conducive to attaining high work standards. To achieve these objectives, the Agency prohibits the possession of firearms and weapons in the work place, regardless of any license or permit that an individual may have which otherwise authorizes the individual to carry firearms or weapons.

It is illegal and a criminal violation to possess weapons in public buildings (California Penal Code 171b and 171.7).

### **II. Scope**

This policy applies to all Omnitrans employees, including but not limited to staffing agency workers and contractors working for or with the Agency at any time, regardless of whether the Agency is the actual employer.

Possession of firearms and weapons is prohibited at all Omnitrans' offices, parking lots, agency vehicles and job sites, and in all Agency vehicles.

The following person/s are exempt from this policy as stated: a guard of a contract carrier operating an armored vehicle, and any law enforcement officer who is carrying out official duties engaged in protecting and preserving property or life within the scope of his or her employment.

Omnitrans will strictly enforce this policy. Violation of this policy will result in immediate disciplinary action, up to and including termination.

### **III. Procedure**

#### **A. COMMUNICATION OF POLICY**

(a) Each employee of the Agency shall receive a copy of this policy at the time of his/her hire and shall sign a copy of the acknowledgment. Employees who were employed before the effective date of this policy shall also receive a copy of this policy and shall sign a copy of the acknowledgment. A copy of the signed acknowledgment and of all new and revised policies throughout the employee's employment shall be maintained in each employee's personnel file.

(b) A copy of this policy shall be attached to each contractor's contract, and shall become a part of its contract. The contractor shall be responsible for communicating this policy to its employees and any subcontractors to which the contractor sublets any portion of its contract.



## PERSONNEL POLICY MANUAL

POLICY 707 PAGE 2 OF 6

### SUBJECT

### PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: June 7, 2017

#### B. PROHIBITED CONDUCT

(a) The transportation of firearms or weapons in Agency vehicles is prohibited. This includes but is not limited to:

- (1) to and from work,
- (2) when conducting Agency business,
- (3) at all times in Agency-owned or leased vehicles.

(b) The possession or carrying of permitted and non-permitted firearms or weapons while at Agency buildings, parking lots, sponsored events, and job sites.

(c) Exception: Power actuated tools which are manufactured for the use of fastening building materials and sanctioned tools for the purpose of performing Agency job duties are not subject to this policy.

#### C. SEARCH

(a) Omnitrans reserves the right to conduct reasonable, unannounced searches of Agency premises and personal searches of employees and others while entering, on, or leaving Agency premises, including, but not limited to, personal effects, vehicles, lockers, desks, tool boxes, clothing, meal containers, and baggage. Searches will be conducted when the Agency has a reasonable suspicion to believe that a particular employee may be in possession of a weapon or firearm.

(b) "Reasonable suspicion" is defined as a suspicion that is based on specific personal observations such as an employee's manner, disposition, behavior, speech, information provided to management by an employee, by law enforcement officials, by a security service, or by other persons believed to be reliable, or a suspicion that is based on other surrounding circumstances.

(c) Individuals refusing to allow an inspection will not be detained or forced to submit to the inspection. Refusal violates Agency policy and constitutes an act of insubordination constituting disciplinary action, up to and including separation of the employment relationship. Non-employees who refuse to allow an inspection will not be permitted on Agency premises and will be required to immediately leave the premises. Employees will be relieved of all duties while pending investigation.

#### D. DISCIPLINE

(a) Violations of any portion of this policy will subject the employee to discipline,



## PERSONNEL POLICY MANUAL

POLICY 707 PAGE 3 OF 6

### SUBJECT

### PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: June 7, 2017

up to and including separation of employment.

(b) Violations by a contractor's employee or subcontractor of any portion of this policy may constitute a breach of contract and regardless will mandate the immediate removal of the contractor's employee from Agency premises, prohibition against the individual accessing Agency premises in the future, and may also constitute a breach of contract.

## E. REPORT OF VIOLATIONS

### 1. Employee Violations

Employees are required to report violations of this policy without regard to the relationship between the individual who initiates the prohibited behavior and the individual reporting it. An employee who believes that another employee may be in violation of this policy must report the alleged violation to the employee's manager or supervisor, the department director, security, or the appropriate departmental Human Resources representative.

Departments are responsible for implementing this policy. The Agency will promptly investigate allegations of violations of this policy.

OmniTrans reserves the right to authorize searches for prohibited weapons on its property when a violation is reported or when probable cause or reasonable suspicion is present consistent with law.

Employees should be aware that there is no reasonable expectation of privacy with respect to weapons in the workplace. The Agency's right to conduct searches includes, but is not limited to, such areas and items as lockers, desks, workstations, offices, purses, briefcases, bags, toolboxes, and lunch bags.

Searches of the employee's work area and belongings, as described above, may be conducted by the Security & Emergency Preparedness Coordinator, or designee. Searches of all types, including surrounding agency property, personal property and the employee may be conducted by law enforcement in accordance with law should reasonable suspicion be present. Any weapon found in violation of this policy may be confiscated. Refusal to permit a search may result in discipline, up to and including separation.

### 2. Visitor Violations

Visitors are not allowed to carry a weapon on the premises. Any visitor carrying a weapon into a posted no-carry agency facility is creating an elevated risk to security and safety that warrants a response leading to compliance with the law. If the visitor





## PERSONNEL POLICY MANUAL

POLICY 707 PAGE 4 OF 6

### SUBJECT

### PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: June 7, 2017

poses an immediate risk to security or safety, law enforcement shall be notified immediately by calling 9-911. The visitor shall be considered an immediate risk to safety and security if he/she is acting in an aggressive, belligerent, confrontational, suspicious or in an otherwise questionable manner while carrying a weapon.

#### F. FALSE REPORTS

Employees making intentionally false and malicious complaints of weapons in the workplace will be subject to disciplinary action, up to and including separation and/or will be reported to the proper authorities as appropriate.

#### G. ROLES AND RESPONSIBILITIES

Employees are responsible for understanding and complying with the Policy Prohibiting Weapons in the Workplace.

Whenever there is a question as to whether an instrument, article or substance is considered a weapon in violation of this policy, it is the employee's responsibility to seek clarification. Employees seeking clarification should direct their questions to the agency's Security & Emergency Preparedness Coordinator at 909-379-7117 prior to bringing the item(s) to Omnitrans work sites and events, as well as agency-owned or leased facilities or vehicles.

#### H. SAFETY FIRST

In applying this policy, no employee shall take any action that will risk his or her own safety or the safety of other individuals. No attempt should ever be made by an employee to restrain or forcibly evict an armed person from agency premises.

An individual's continued non-compliance after being properly informed of the law (California Penal Code 171 (b)) will result in notification to law enforcement and discipline, up to and including separation of employment. Employees should notify security immediately.

An employee who feels an imminent danger to his or her own safety or the safety or security of others, should avoid any interaction with the individual. Immediately contact law enforcement by calling 9-911 and security at 909-379-7117.

#### I. ANTI-RETALIATION PROVISION

Omnitrans strictly prohibits any retaliation against an employee who has reported a possible breach of policy. If an employee feels that he or she has been subjected to retaliation in violation of this policy, the employee must immediately report it to his or her supervisor or other designated Human Resources representative.



## PERSONNEL POLICY MANUAL

POLICY 707 PAGE 5 OF 6

SUBJECT  
**PROHIBITING WEAPONS IN THE WORKPLACE**

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: June 7, 2017

### J. DEFINITIONS

1. **Firearm or weapon includes, but is not limited to:** A weapon, a pistol or rifle, whether loaded or unloaded, capable of firing a projectile and using an explosive as a propellant.
  - A firearm, whether loaded or unloaded, from which a shot may be discharged including but not limited to handguns, pistols, revolvers, shotguns, rifles, and bb guns;
  - A gun that can discharge a shot or a projectile by means of an explosive or gas, or compressed air;
  - A device designed to be used as a weapon, from which can be expelled a projectile by the force of any explosion or force of combustion;
  - Any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
  - Any destructive device;
  - Any device designed as a weapon and capable of producing great bodily harm, including but not limited to, stun guns, stun batons;
  - An electric weapon such as a taser gun;
  - Any combustible or flammable liquid, or other substance, device, or instrumentality that, in a manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or any fire that is used to produce death or great bodily harm;
  - Any knife that is carried with intention or calculation to produce death or great bodily harm having a blade length in excess of four (4) inches, the blade of which is fixed or is capable of being fixed in an unguarded position by the use of one or two hands. Switchblades are specifically prohibited. (Knives intended to be used as eating utensils, and stored or maintained in office kitchens or lunchrooms do not represent a violation of this policy.)
2. **Office:** All permanent facilities, all mobile facilities, all leased facilities, and any facility designated as an office by the agency.
3. **Parking lot:** All lots at permanent facility, park and rides, lots at project sites, any lot that the agency designates as a parking lot that is not at a permanent facility or project site.
4. **Agency vehicle:** All agency-owned buses/vehicles, all agency-leased buses/vehicles, all agency-rental buses/vehicles, and all personal vehicles for which the owner receives a vehicle allowance, all personal vehicles where the owner receives reimbursement for mileage.



## PERSONNEL POLICY MANUAL

POLICY 707 PAGE 6 OF 6

SUBJECT  
**PROHIBITING WEAPONS IN THE WORKPLACE**

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: June 7, 2017

5. **Search:** To examine in order to find something concealed.

6. **Job sites:** Any and all locations where the agency conducts business.

### SIGNS

1. At each entrance to buildings, parking lots, and project sites, a sign shall be posted in a location that is conspicuous to all who could enter a building, parking lot, or project site.
2. Signs shall have wording or pictogram that prohibits firearms, weapons and give notice of video surveillance. Signs shall be vandalism resistant and of the quality that they will not fade due to the elements.

**Bid Results****Bidder Details**

**Vendor Name** SMART IT PROS INC  
**Address** 1267 Willis St. STE 200,  
 Redding, CA 96001  
 United States

**Respondee** David Thomas  
**Respondee Title** Director - Sales  
**Phone** 734-238-1553 Ext.  
**Email** dave.thomas@smartitpros.com  
**Vendor Type** SBE

**Bid Detail**

**Bid Format** Electronic  
**Submitted** October 15, 2019 6:41:37 AM (Pacific)  
**Delivery Method** FOB / 30days  
**Bid Responsive**  
**Bid Status** Submitted  
**Confirmation #** 192892  
**Ranking** 0

**Respondee Comment****Buyer Comment****Attachments**

File Title	File Name	File Type
Current client references	FORM - Current Client References.pdf	Current Client Reference
NOT ON EXCLUDED PARTIES LIST	NOT ON EXCLUDED PARTIES LIST_singed.pdf	Not on Excluded Parties List
DECLARATION OF NON-COLLUSION	DECLARATION OF NON-COLLUSION.pdf	Declaration of Non-Collusion
DEBARMENT AND SUSPENSION - PRIME	Debarment and Suspension - Prime.pdf	Debarment - Prime
DEBARMENT, SUSPENSION - SUB CON	DEBARMENT, SUSPENSION_Sub Con.pdf	Debarment - Subcontractor
LIST OF SUBCONTRACTORS	LIST OF SUBCONTRACTORS.pdf	List of Subcontractors
PROPOSED DBE	Proposed DBE.pdf	Proposed DBE
RESTRICTION ON LOBBYING - PRIME	RESTRICTIONS ON LOBBYING Prime_singed.pdf	Restrictions on Lobby - Prime
RESTRICTIONS ON LOBBYING - SUB CON	RESTRICTIONS ON LOBBYING_SubCon_singed.pdf	Restrictions of Lobby - Subcontractor
STATUS OF PAST AND PRESENT CONTRACTS	STATUS OF PAST AND PRESENT CONTRACTS FORM.pdf	Status of Past and Present Contracts Form
WARRANTY CLAIM PROCEDURE	WARRANTY CLAIM PROCEDURE (REQUIRED).pdf	Warranty Procedure Form
DELL SUPPORT PROCESS	Dell Support Process.zip	General Attachment
RFQ-ITS20-48 FILLED	RFQ-ITS20-48 Information Technology IT Hardware_10102019.pdf	General Attachment

**Line Items**

Type	Item Code	UOM	Qty	Unit Price	Line Total	Discount	Comment
	IT Hardware - Per Attachment A - Scope of Work						

Information Technology (IT) Hardware (RFQ-ITS20-48), bidding on October 17, 2019 11:00 AM (Pacific)

Printed 10/18/2019

**Bid Results**

Type	Item Code	UOM	Qty	Unit Price	Line Total	Discount	Comment
1	Dell Latitude 5420 Rugged Laptop CTO	EA	3	\$1,644.7400	\$4,934.2200	\$4,934.2200	
2	Dell 24 Monitor - P2419H	EA	30	\$170.6100	\$5,118.3000	\$5,118.3000	
3	Dell XPS 15 7590	EA	35	\$1,982.4900	\$69,387.1500	\$69,387.1500	
4	OptiPlex 7070 Micro MFF BTX	EA	30	\$904.9600	\$27,148.8000	\$27,148.8000	
5	Dell Thunderbolt Dock TB16 - 180W	EA	35	\$221.7500	\$7,761.2500	\$7,761.2500	
				<b>Subtotal</b>	<b>\$114,349.7200</b>	<b>\$114,349.7200</b>	
	<b>Section 1</b>						
6	Sales Tax - 8%	LOT	1	\$9,148.0100	\$9,148.0100	\$9,148.0100	
7	Shipping/Delivery	LOT	1	0	0	0	
				<b>Subtotal</b>	<b>\$9,148.0100</b>	<b>\$9,148.0100</b>	
				<b>Total</b>	<b>\$123,497.7300</b>	<b>\$123,497.7300</b>	

**OMNITRANS  
TERMS AND CONDITIONS OF PURCHASE**

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1. **PURCHASE ORDER (P.O.)** Omnitrans shall not be responsible for goods or services provided to officials or employees without a duly authorized P.O.
2. **INVOICES.** Invoices shall be submitted under the same name as that which is shown on the face of this P.O. The P.O. number must appear on all invoices, shipping notices, delivery and packing slips, packages and correspondence. Each P.O. shall be invoiced separately. Submit invoices monthly or as prescribed by Omnitrans' Finance Dept.  
Invoices shall reference the appropriate purchase order number and contract number. Contractor shall send invoices to:
  - [accountspayable@omnitrans.org](mailto:accountspayable@omnitrans.org) Finance
  - [contracts@omnitrans.org](mailto:contracts@omnitrans.org) ProcurementThe above does not apply to those Contractors whose invoices are also their packing slip, work order, delivery ticket, etc.
3. **PACKING SLIPS.** Packing slips must accompany each shipment unit (included with each package in shipment), showing Omnitrans' P.O. number, description, and part number for each item.
4. **ACCEPTANCE.** Goods are subject to Omnitrans' inspection and approval within a reasonable time after delivery. If specifications are not met or not approved, material may be returned at supplier's expense.
5. **DELIVERY.** Unless otherwise indicated on the face of this order, delivery shall be FOB destination. COD shipments will not be accepted. Deliveries for all departments must be made through Omnitrans' Receiving Department. Nonpayment may result for goods delivered in any other manner.
6. **PARTIAL DELIVERIES.** Shipments must be identified as partial or complete, along with the number of shipping units.
7. **MODIFICATIONS.** Supplier shall not make any alterations or change to this order in any fashion without prior written authorization from Omnitrans.
8. **WARRANTY.** Vendor warrants that the item(s) provided and/or work performed under this contract comply with all specifications, are free of liens and encumbrances, and that workmanship and materials are free from defects. Work shall comply with nationally recognized codes and established industry standards. Equipment shall carry the manufacturers' most favorable commercial warranties. The warranty period shall begin after acceptance of item(s) and/or work. Vendor agrees to remedy by replacing or repairing any item(s) that is damaged or defective during normal usage within the warranty period, at no additional cost to Omnitrans. Such repair or replacement shall occur within a reasonable time frame and to the satisfaction of Omnitrans.
9. **FEDERAL, STATE AND LOCAL LAWS.** All goods or services furnished pursuant to this P.O. shall comply with all CAL-OSHA standards and regulations and all applicable Federal, state and local laws and regulations.
10. **GOVERNING LAW.** This P.O. and the contract between the parties evidenced hereby or attached thereto shall be deemed to be made in the State of California and shall in all respects be construed and governed by the laws of that state.
11. **PATENT PROTECTION.** To the extent the subject articles are not manufactured pursuant to design originated by Omnitrans, supplier agrees it will indemnify and hold Omnitrans and its officers, agents, and employees harmless from any loss, damage or liability which may be incurred on account of any alleged infringement of any United States patent with respect to such articles or materials, and that it will, at its own expense, defend any action, suit or claim in which such infringement is alleged. Omnitrans agrees to notify supplier promptly of any suit or claim against Omnitrans for any alleged infringement of patent.
12. **DISADVANTAGED BUSINESS ENTERPRISE.** The supplier shall not discriminate based on race, color, national origin, or sex in the performance of this P.O.
13. **ENERGY CONSERVATION.** The supplier agrees to comply with the requirements of the Resource Conservation and Recovery Act, as amended, 42 USC §§6901 et seq.
14. **TITLE VI OF THE CIVIL RIGHTS ACTS OF 1964.** Supplier agrees to comply with all applicable requirements of Title VI of the Civil Rights Act of 1964, 42 USC § 2000d and USDOT regulations "Nondiscrimination in Federally Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act," 49 CFR, part 21.
15. **RECORD RETENTION.** The supplier shall make available within 30 days, upon request by Omnitrans, all records related to this P.O. for a period of up to three (3) years after closure.
16. **INSURANCE.** The supplier shall be required to provide a Certificate of Insurance for (1) Workers' Compensation in an amount to meet the requirements of the Labor Code of the State of California, including Employer's Liability with \$1,000,000 limits covering all persons including volunteers providing services on behalf of the supplier and all risks to such persons under this contract; (2) Commercial/General Liability (CGL) insurance covering all operations performed by or on behalf of the supplier, providing coverage for bodily injury and property damage with a \$1,000,000, per occurrence and \$2,000,000 general aggregate limit. The CGL policy coverage shall include: premises operations and mobile equipment; products and completed operations; broad form property damage; explosion, collapse and underground hazards; personal injury; contractual liability and (3) Auto Liability (AL) insurance with a combined single limit (CSL) of not less than \$1,000,000 per occurrence. CGL and AL must contain an endorsement that names Omnitrans as an additional insured with coverage at least as broad as Additional Insured (Form B) endorsement form ISO, CG 20 10 11 85.

17. **AMERICANS WITH DISABILITIES ACT.** The supplier agrees to comply with all the applicable requirements of the Americans with Disabilities Act of 1990, 42 USC §12101 et seq. in conjunction with this P.O.
18. **DRUG AND ALCOHOL POLICY.** It is the policy of Omnitrans that anyone, while on Agency property, is prohibited from unlawfully manufacturing, distributing, dispensing, possessing or using controlled substances or alcohol or illegally using or misusing legally prescribed drugs.
19. **INTEREST OF MEMBERS OF CONGRESS.** No member of or delegate to the Congress of the United States shall be admitted to any share or part of the P.O.
20. **INDEMNIFICATION.** The supplier shall indemnify, keep and save harmless Omnitrans, its agents, officials and employees from any and all claims, actions, losses, damages, and/or liability arising out of this P.O. from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by Omnitrans on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The supplier's indemnification obligation applies to Omnitrans' "active" as well as "passive" negligence but does not apply to Omnitrans' "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.
21. **FORCE MAJEURE (EVENTS BEYOND THE CONTROL OF THE SUPPLIER).** The supplier will not be held liable for failure of delay in fulfillment if hindered or prevented by act of God, fire, strike, loss or shortage of transportation facilities, lock-out, commandeering of materials, products, plants or facilities by government that are not reasonably foreseeable.
22. **ACKNOWLEDGMENT.** By delivery of the goods or services purchased herein, the supplier agrees to all the terms and conditions of this P.O.
23. **TERMINATION.** Omnitrans may terminate the P.O. in whole or in part for Omnitrans' convenience or because of the failure of the supplier to fulfill the contract obligation. Omnitrans' CEO/General Manager shall terminate by specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the supplier shall: (a) immediately discontinue all services affected and (b) deliver to Omnitrans' CEO/General Manager all data, drawings, specifications, reports, estimates, summaries and other information and materials accumulated in performing this contract, whether completed or in process. If the termination is for the convenience of Omnitrans, Omnitrans shall make an equitable adjustment in the P.O., but shall not allow anticipated profit on unperformed services.
24. **APPLICABILITY.** The Terms and Conditions stated herein will supersede or supplement the terms and conditions of any Omnitrans procurement wherein the terms and conditions were previously specified.
25. **OSHA COMPLIANCE.** The items covered by this P.O. must conform to safety orders of OSHA, CALOSHA, and /or NIOSH, and applicable Material Safety Data Sheets (MSDS). Vendor is required to provide a completed MSDS for all hazardous substances as required by Labor Code Sections 6390; General Industrial Safety Order, Section 5194; and Title 8, California Admins. Code. MSDS sheets need to be sent to Omnitrans' Safety and Regulatory Compliance Specialist for each specified item and a copy sent to Omnitrans' Procurement Department.
26. **QUESTIONS.** Questions regarding the Terms and Conditions of this P.O. are to be directed to the Procurement Department, phone 909.379.7146; fax: 909.379.7107; 1700 West Fifth Street, San Bernardino, CA 92411.

End of the Purchase Order Terms and Conditions

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Date last revised: February 28, 2013

# **Attachment B**

## **REGULATORY REQUIREMENT**

### **Table of Contents**

#### **Contents**

NO FEDERAL OBLIGATION TO THIRD PARTIES .....	2
FALSE OR FRAUDULENT STATEMENTS OR CLAIMS – CIVIL AND CRIMINAL FRAUD .....	2
ACCESS TO THIRD PARTY CONTRACT RECORDS .....	3
FEDERAL FUNDING, INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS, AND FEDERAL CHANGES .....	4
CIVIL RIGHTS REQUIREMENTS (TITLE VI, ADA, EEO (EXCEPT SPECIAL DOL CONSTRUCTION CLAUSE).....	4
DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26 .....	5
TERMINATION 49 U.S.C. Part 18 FTA Circular 4220.1F.....	6
SUSPENSION AND DEBARMENT.....	8
CLEAN WATER AND CLEAN AIR REQUIREMENTS .....	9
BREACHES AND DISPUTE RESOLUTION 49 CFR Part 18 FTA Circular 4220.1F .....	9
CARGO PREFERENCE .....	10
FLY AMERICA .....	11
ENERGY CONSERVATION REQUIREMENTS .....	12
RECYCLED PRODUCTS .....	12
NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS .....	12
ADMINISTRATIVE CODE .....	13
DISCRIMINATION.....	13
WHISTLEBLOWER REQUIREMENTS .....	14
PUBLIC RECORDS ACT .....	14
PRIVACY ACT - 5 U.S.C. 552.....	14
VETERANS PREFERENCE .....	15



## **REGULATORY REQUIREMENTS**

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

### **Required Clauses for All FTA-Assisted Third-Party Contracts and Subcontracts**

#### **RR-01**

##### **NO FEDERAL OBLIGATION TO THIRD PARTIES \***

In connection with the Project, the Recipient agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, lessee, third party contractor, or other participant at any tier of the Project, or other person or entity that is not a party to the Grant Agreement or Cooperative Agreement for the Project. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, subagreement, lease, third party contract, or arrangement at any tier, the Federal Government has no obligations or liabilities to any entity other than the Recipient, including any subrecipient, lessee, third party contractor, or other participant at any tier of the Project.

#### **RR-02**

##### **FALSE OR FRAUDULENT STATEMENTS OR CLAIMS – CIVIL AND CRIMINAL FRAUD \***

###### **A. Civil Fraud.**

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, apply to the Recipient's activities in connection with the Project. By executing the Grant Agreement or Cooperative Agreement for the Project, the Recipient certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the Recipient the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.

###### **B. Criminal Fraud.**

If the Recipient makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the Recipient the penalties of 49 U.S.C. § 5323(I), 18 U.S.C. § 1001, or other applicable Federal law to the extent the Federal Government deems appropriate.

- C. 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-03**

#### **ACCESS TO THIRD PARTY CONTRACT RECORDS \***

- A. Access to Third Party Contract Records.

The Recipient agrees to require, and assures that its subrecipients require, their third party contractors and third party subcontractors at each tier to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all third party contract records as required by 49 U.S.C. § 5325(g). The Recipient further agrees to require, and assures that its subrecipients require, their third party contractors and third party subcontractors, at each tier, to provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure proper Project management as determined by FTA.

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.

- B. 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.
- C. 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-04****FEDERAL FUNDING, INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS, AND FEDERAL CHANGES**

- A. 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.
- B. 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-05****CIVIL RIGHTS REQUIREMENTS (TITLE VI, ADA, EEO (EXCEPT SPECIAL DOL CONSTRUCTION CLAUSE \***

- A. 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.
- B. 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-06**

#### **DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26**

- 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 agency's overall goal for DBE participation is 1%.
- 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-07**

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

#### **Applicability to Contracts**

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

#### **Flow Down**

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

- a. **Termination for Convenience (General Provision)** Omnitrans may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Omnitrans to be paid

the Contractor. If the Contractor has any property in its possession belonging to the Omnitrans, the Contractor will account for the same, and dispose of it in the manner the Omnitrans directs.

- b. **Opportunity to Cure (General Provision)** Omnitrans in its sole discretion may, in the case of a termination for breach or default, allow the Contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

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

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

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

- 1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. The contractor, within [10] days from the beginning of any delay, notifies Omnitrans in writing of the causes of delay. If in the judgment of Omnitrans, the delay is excusable, the time for completing the work shall be extended. The judgment of Omnitrans shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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

## **RR-08**

### **SUSPENSION AND DEBARMENT\***

- A. 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.

- B. 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-09**

### **COMPLIANCE WITH FEDERAL LOBBYING POLICY \***

- A. 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-010****CLEAN WATER AND CLEAN AIR REQUIREMENTS\*****A. 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.

**B. 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-011****NON-CONSTRUCTION ACTIVITIES**

Activities Not Involving Construction. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, and other participant at any tier of the Project, with the employee protection requirements for nonconstruction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with implementing U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5.

**RR-012****BREACHES AND DISPUTE RESOLUTION 49 CFR Part 18 FTA Circular 4220.1F****Applicability to Contracts**

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



### **Flow Down**

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

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

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

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

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

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

### **RR-013**

#### **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 loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to 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-014**

##### **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-015**

##### **SPECIAL NOTIFICATION REQUIREMENTS FOR STATES**

To the extent required by Federal law, the State agrees that, in administering any Federal assistance Program or Project supported by the Grant Agreement or Cooperative Agreement, any request for proposals, solicitation, grant application, form, notification, press release, or other publication involving the distribution of FTA assistance for the Program or the Project shall indicate that FTA is the Federal agency that is providing the Federal assistance, the Catalog of Federal Domestic Assistance Number of the program from which the Federal assistance is authorized, as may be applicable, and the amount of Federal assistance FTA provided.

**RR-016**  
**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-017**  
**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-018**  
**NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS**

To the extent applicable, the Recipient agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and follow the provisions of FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

**RR-019****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-020****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-021**

### **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-022**

### **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-023**

### **PRIVACY ACT - 5 U.S.C. 552**

#### **Applicability to Contracts**

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

### **Flow Down**

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

### **Model Clause/Language**

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

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


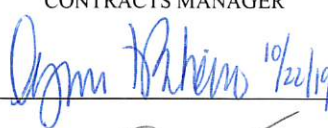
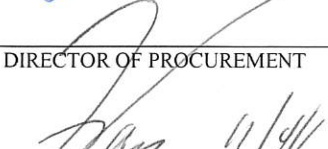
- (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before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

### **RR-024**

#### **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**

 <b>OmniTrans</b> Omnitrans STANDARD CONTRACT	<input checked="" type="checkbox"/>	New					Contract Number ITS20-18
	<input type="checkbox"/>	Change					
	<input type="checkbox"/>	Option					
1700 West Fifth Street San Bernardino CA 92411	Omnitrans Department Information Technology		Dept. No. 1300		Project Three Pairs of Frequency Channels		
CONTRACTS MANAGER  10/22/19	Omnitrans Procurement Representative Christine Van Matre		Telephone 909-379-7122		Total Contract Not-to- Exceed Amount \$720,000		
DIRECTOR OF PROCUREMENT  11/4/19	Contract Type:						Lease
		Contract Start Date 3/1/2020	Contract End Date 2/28/2025	Previous Amount	Amended Amount		

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

Name

Mobile Relay Associates

hereinafter called Contractor

Address

15330 Vermont Avenue

Paramount CA 90723

Telephone

Federal ID No.

323-636-5202

95-4244295

### IT IS HEREBY AGREED AS FOLLOWS:

- Contract Documents.** The complete Contract Record includes all of the following Contract Documents, either included herewith or incorporated herein by reference, and they are included in their entirety as a part of this Contract, to wit:
  - This signed Agreement dated \_\_\_\_\_ and Attachment B – Regulatory Requirements; and
  - Spectrum Management Lease Agreement signed and dated \_\_\_\_\_.
- Scope of Work.** The Contractor agrees to perform certain work set forth and particularly described in the aforementioned documents, incorporated herein by reference.
- Compensation.** Omnitrans agrees to pay, and the Contractor agrees to accept in full, payment for the work outlined in the Contract Documents, which will be a usage fee based on three channels at a per channel price of four thousand dollars per month.

Estimated Price.....\$720,000

ITS20-18, THREE PAIRS OF FREQUENCY CHANNELS

4. **Contract Duration.** The duration of this contract is five years with a start date of March 1, 2020 and an end date of February 28, 2025.
5. **Acknowledgement.** Omnitrans acknowledges that the U.S. Federal Communications Commission (FCC) must be notified electronically of this spectrum lease renewal. Omnitrans agrees to provide Contractor with Omnitrans' FCC-ULS password, so that Contractor may electronically notify the FCC of renewal, and otherwise to cooperate with Contractor in making electronic FCC notification.
6. **Omnitrans Contacts.**

**Contract Technical Activities:** Ben Greenbeck, System Coordinator, phone: (909) 379-7129; email ben.greenbeck@omnitrans.org.

**Contract Administration:** Christine Van Matre, Contract Administrator, phone: (909) 379-7122; email: christine.vanmatre@omnitrans.org.

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

**OMNITRANS**

**MOBILE RELAY ASSOCIATES**

\_\_\_\_\_  
Erin Rogers  
Interim CEO/General Manager

\_\_\_\_\_  
Mark J. Abrams  
President

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Dated



# **Attachment B**

## **REGULATORY REQUIREMENTS**

### **Table of Contents**

#### **Contents**

NO FEDERAL OBLIGATION TO THIRD PARTIES .....	2
FALSE OR FRAUDULENT STATEMENTS OR CLAIMS – CIVIL AND CRIMINAL FRAUD .....	2
ACCESS TO THIRD PARTY CONTRACT RECORDS .....	3
FEDERAL FUNDING, INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS, AND FEDERAL CHANGES .....	4
CIVIL RIGHTS REQUIREMENTS (TITLE VI, ADA, EEO (EXCEPT SPECIAL DOL CONSTRUCTION CLAUSE).....	4
DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26 .....	5
TERMINATION 49 U.S.C. Part 18 FTA Circular 4220.1F.....	6
SUSPENSION AND DEBARMENT.....	7
COMPLIANCE WITH FEDERAL LOBBYING POLICY * .....	8
CLEAN WATER AND CLEAN AIR REQUIREMENTS .....	8
BREACHES AND DISPUTE RESOLUTION 49 CFR Part 18 FTA Circular 4220.1F* .....	9
ENERGY CONSERVATION REQUIREMENTS .....	9
ADMINISTRATIVE CODE .....	9
WHISTLEBLOWER REQUIREMENTS .....	10
PUBLIC RECORDS ACT .....	10

## **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 NO FEDERAL OBLIGATION TO THIRD PARTIES \***

In connection with the Project, the Recipient agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, lessee, third party contractor, or other participant at any tier of the Project, or other person or entity that is not a party to the Grant Agreement or Cooperative Agreement for the Project. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, subagreement, lease, third party contract, or arrangement at any tier, the Federal Government has no obligations or liabilities to any entity other than the Recipient, including any subrecipient, lessee, third party contractor, or other participant at any tier of the Project.

### **RR-02 FALSE OR FRAUDULENT STATEMENTS OR CLAIMS – CIVIL AND CRIMINAL FRAUD \***

#### **A. Civil Fraud.**

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, apply to the Recipient's activities in connection with the Project. By executing the Grant Agreement or Cooperative Agreement for the Project, the Recipient certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the Recipient the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.

#### **B. Criminal Fraud.**

If the Recipient makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the Recipient the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001, or other applicable Federal law to the extent the Federal Government deems appropriate.

- C. 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-03**  
**ACCESS TO THIRD PARTY CONTRACT RECORDS \***

- A. Access to Third Party Contract Records.  
The Recipient agrees to require, and assures that its subrecipients require, their third party contractors and third party subcontractors at each tier to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all third party contract records as required by 49 U.S.C. § 5325(g). The Recipient further agrees to require, and assures that its subrecipients require, their third party contractors and third party subcontractors, at each tier, to provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure proper Project management as determined by FTA.

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.

- B. 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.
- C. 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-04**  
**FEDERAL FUNDING, INCORPORATION OF FEDERAL TRANSIT**  
**ADMINISTRATION (FTA) TERMS, AND FEDERAL CHANGES**

- A. 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.
- B. 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-05**  
**CIVIL RIGHTS REQUIREMENTS (TITLE VI, ADA, EEO (EXCEPT SPECIAL DOL**  
**CONSTRUCTION CLAUSE \***

- A. 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.
- B. 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-06**  
**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 agency's overall goal for DBE participation is 6.1%.
- 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. 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-07**

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

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

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

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

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

## **RR-08 SUSPENSION AND DEBARMENT\***

- A. 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.

- B. 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-09**  
**COMPLIANCE WITH FEDERAL LOBBYING POLICY \***

- A. 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-010**  
**CLEAN WATER AND CLEAN AIR REQUIREMENTS\***

**A. 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.

**B. 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-011**  
**BREACHES AND DISPUTE RESOLUTION 49 CFR Part 18 FTA Circular 4220.1F\***

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

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

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

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

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

**RR-012**  
**ENERGY CONSERVATION REQUIREMENTS**

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-013**  
**ADMINISTRATIVE CODE \***

**A. 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.

**B. 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-014  
WHISTLEBLOWER REQUIREMENTS \***

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-015  
PUBLIC RECORDS ACT \***

- A. 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.

- B. 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.

**END OF REGULATORY REQUIREMENTS**

## SPECTRUM MANAGEMENT LEASE AGREEMENT

THIS SPECTRUM MANAGEMENT LEASE AGREEMENT ("Agreement") is made and entered into as of the date last executed below (the "Execution Date") by and between **Mobile Relay Associates** (the "Licensee") and **Omnitrans** (the "User") (each of the Licensee and the User may be referred to herein as a "Party" and collectively, as "Parties").

WHEREAS, Licensee holds the geographic area Federal Communications Commission ("FCC") License (the "License") authorizing it to use, among others, the paired frequency assignments (the "Channels") set forth in Exhibit A attached hereto and incorporated herein by reference; Data and Voice Channels Skyline Peak, Frequency 454.16875 MHz WPVE959, 454.40625 MHz WPVE962, 454.63125 MHz WPVE96;

WHEREAS, User wishes to employ the Channels on an exclusive basis within a portion of Licensee's licensed service area, such portion (the "Market") being more fully described in Exhibit A;

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:

1. Effective Date and Term. Subject to the terms and conditions set forth herein, Licensee hereby agrees to grant User the exclusive right to use the Channels in the Market during the term hereof, including any renewal term ("Usage Right"). User's Usage Right as described in the preceding sentence shall commence twenty-one (21) days after the filing of the required FCC Form 603 notification (the "Effective Date"). The initial term of this Agreement shall be for five (5) years (the "Initial Term") from the Effective Date. Assuming that the License remains valid and is renewed by the FCC, User shall have the right, within ninety (90) days of the expiration of the then-current Term to renew this Agreement, for up to two additional five (5) year terms (each, a "Renewal Term"). Reference to "Term" in this Agreement shall mean the Initial Term or the Renewal Term, whichever is then in effect. In any case, the Term of this Agreement shall not extend beyond the term of the License unless the License is renewed; *provided however*, Licensee shall timely prosecute a renewal application, and the License shall be deemed to be within its term while such renewal application is pending.

2. Sites. Subject to the review, supervision and ultimate control of Licensee, the Usage Right conveys to User the exclusive right to construct and operate a wireless communications system on the Channels within the Market ("System"); *provided however*, that User shall do so consistent with the Plan set forth and incorporated herein by reference. Consistent with the foregoing, User shall have the right and obligation to:

- (a) Sites that have been constructed for the System in accordance with the Plan and are unchanged;

- (b) identify, obtain and maintain, in its own name, full legal right to all real property necessary to deploy the System;
  - (c) obtain and maintain, in its own name, appropriate zoning approval for the System;
  - (d) purchase, in its own name, all equipment as may be necessary or appropriate for the construction and operation of the system; and
  - (e) undertake all System financial obligations, including payment of all System operating expenses.
3. No Security Interest. User may not pledge, mortgage, hypothecate or otherwise grant a security interest in, or otherwise encumber its Usage Right.
4. Use of Station Capacity.
- (a) User represents and warrants that it is acquiring the Usage Right solely for its internal use, and without any interconnection to the public switched landline telephone network ("PSTN"). User covenants not to sublease the Usage Right, nor to interconnect the System with the PSTN, nor to operate the System in a for-profit mode to paying subscribers. User acknowledges that Licensee classifies its License for the Channels as "PMRS", as that term is defined by the FCC, and covenants not to use the Usage Right in any manner inconsistent with such classification.
  - (b) The Usage Right includes only the Channels, and then only within the Market. Licensee retains all rights throughout its licensed service area to all other spectrum contained in the License, and all rights to the Channels outside the Market but within its licensed service area.
  - (c) User is obligated to construct and operate the System consistent with the Communications Act of 1934 as amended ("Act"), all FCC rules, and all other applicable federal, state and local laws.
5. Payments
- (a) During the Term, and beginning on the Effective Date, as consideration for entering into this Agreement, User shall pay Licensee twelve thousand dollars (\$12,000) each month (the Usage Fee). The Usage Fee is based on three channels, at a per channel price of four thousand dollars (\$4,000) per month. The Usage Fee shall be adjusted every five (5) years from the Effective Date (each such 5-year anniversary, an "Adjustment Date") based on the change in the Consumer Price Index ("CPI") maintained by the United States Department of Labor's Bureau of Labor Statistics, or any successor United States agency. Within ninety (90) days of each Adjustment Date, Licensee shall provide User in writing with the Usage Fee applicable to the next five years. Should Licensee fail to notify User of such increase during the 90 days prior to the Adjustment Date, then Licensee may notify User of the increase at a later date and such increase shall apply effective 30 days after such notice

and shall apply for the remainder of the Renewal Term and not be retroactive to the beginning of the Renewal Term.

- (b) During the Term, if the Licensee chooses to offer the channels for sale, the Licensee shall first offer the channels for sale to User. If Licensee receives an offer from a third party to sell the channels, then Licensee must offer the channels to User for sale at the same price and terms. If within 30 days, the User chooses not to purchase the channels (or through inaction fails to purchase) at the price and terms, the Licensee may sell the channel to the third party at the same price and terms.

6. Payment Terms and Conditions. Payments shall be received by the first day of every month at Licensee's address specified herein. Payments not received by Licensee within ten (10) days of due date will be considered delinquent ("Delinquent Condition"). The User agrees to pay a Late Fee of One Percent (1%) for each delinquent payment. In the event of a Delinquent Condition, Licensee may suspend the Usage Right on ten (10) days written notice. Subsequent to suspension of the Usage Right based upon a Delinquent Condition, Licensee will be obligated to reinstate access to the Usage Right, only upon its prior receipt of: (a) all monies, in immediately available funds, due Licensee, including all Late Fees, plus (b) a Five Hundred Dollar (\$500.00) reconnection charge. Reinstatement of access shall be deemed timely if accomplished within three (3) business days after satisfaction of the conditions set forth in the preceding sentence.

7. Station Performance.

(a) Interruption of Service. Licensee shall not be liable for any interruption in the Usage Right. User is responsible for the maintenance of its own facilities used to operate the System

(b) Interference Protection. Licensee shall not enter into any agreement with any third party relating to the operation of systems using the Channels within fifty (50) miles of the User sites that are in current use and in place and may not be changed without the prior written consent of User, which consent cannot be unreasonably withheld or delayed. If harmful interference occurs after construction of such third-party sites, Licensee will coordinate all actions necessary to eliminate or reduce such interference to an acceptable level (5% degradation or less) on a timely basis.

8. Licensee's Representations and Warranties. Licensee hereby represents and warrants to User each of the following:

(a) Authority. Licensee is an LLC Corporation in good standing under the laws of the State of California. Licensee has all requisite power, authority and the legal right to execute, deliver and perform this Agreement. Licensee's execution, delivery, and performance of this Agreement has been duly and validly authorized by all necessary action on the part of the Licensee. This Agreement constitutes the legal, valid and binding obligations of Licensee enforceable in accordance with its terms against Licensee except as may be

limited by laws affecting the enforcement of creditors' rights or equitable principles generally.

(b) No Restrictions Against Performance. Neither the execution, delivery, nor performance of this Agreement by Licensee will, with or without the giving of notice or the passage of time, or both, violate any provisions of any conflict with, result in a breach of, constitute a default under, or result in the creation or imposition of any Lien or condition under (i) any and all organizational documents of Licensee; (ii) any federal, state or local law, statute, ordinance, regulation or rule, which is or may be applicable to Licensee; (iii) any contract, indenture, instrument, agreement, mortgage, lease, right or other obligation or restriction to which Licensee is a party or by which Licensee is or may be bound; or (iv) any order, judgment, writ, injunction, decree, License, franchise, permit or other authorization of any federal, state or local court, arbitration tribunal or governmental agency by which Licensee is or may be bound.

(c) Third-Party and Governmental Consents. Except for the 21-day waiting period required by Section 1.9020 of the FCC's rules (47 CFR § 1.9020), no approval, consent, waiver, order or authorization of, or qualification, declaration, or filing with, any federal, state or local governmental authority or other third party is required on the part of Licensee in connection with the execution, delivery or performance of this Agreement.

(d) Litigation. There is no judicial or administrative action, suit or proceeding, pending or, to the best knowledge of Licensee, threatened against or relating to Licensee, before any federal, state or local court, arbitration tribunal or governmental authority which could, individually or in the aggregate adversely affect Licensee's ability to perform its obligations under this Agreement.

9. User's Representations and Warranties. User hereby represents and warrants to Licensee each of the following:

(a) Authority. User is a public agency in good standing under the laws of the State of California, User has all requisite power, authority and the legal right to execute, deliver and perform this Agreement. User's execution, delivery, and performance of this Agreement has been duly and validly authorized by all necessary action on the part of the User. This Agreement constitutes the legal, valid and binding obligations of User enforceable in accordance with its terms against User except as may be limited by laws affecting the enforcement of creditors' rights or equitable principles generally.

(b) No Restrictions Against Performance. Neither the execution, delivery, nor performance of this Agreement by User will, with or without the giving of notice or the passage of time, or both, violate any provisions of any conflict with, result in a breach of, constitute a default under, or result in the creation or imposition of any lien or condition under (i) any and all organizational documents of User; (ii) any federal, state or local law, statute, ordinance,

regulation or rule, which is or may be applicable to User; (iii) any contract, indenture, instrument, agreement, mortgage, lease, right or other obligation or restriction to which User is a party or by which User is or may be bound; or (iv) any order, judgment, writ, injunction, decree, License, franchise, permit or other authorization of any federal, state or local court, arbitration tribunal or governmental agency by which User is or may be bound.

(c) Third-Party and Governmental Consents. Except for the 21-day waiting period required by Section 1.9020 of the FCC's rules (47 CFR § 1.9020), no approval, consent, waiver, order or authorization of, or registration, qualification, declaration, or filing with, or notice to, any federal, state or local governmental authority or other third party is required on the part of User in connection with the execution, delivery or performance of this Agreement.

(d) Litigation. There is no judicial or administrative action, suit or proceeding, pending or, to the best knowledge of User, threatened against or relating to User, before any federal, state or local court, arbitration tribunal or governmental authority which could, individually or in the aggregate adversely affect User's ability to perform its obligations under this Agreement.

#### 10. Indemnification

(a) By Licensee. Licensee shall indemnify and hold harmless User and the agents, employees, partners, shareholders, directors, invitees and independent contractors (collectively, "Agents") of User against and from any and all claims, liabilities, judgments, costs, demands, causes of action and expenses (including, without limitation, reasonable attorneys' fees) arising from: (i) any willful misconduct of Licensee; or (ii) any breach or default in the terms of this Agreement by Licensee. If any action or proceeding is brought against User by reason of such claim, upon notice from User, Licensee shall defend the same at Licensee's expense by counsel reasonably satisfactory to User. The foregoing agreement by Licensee to indemnify User shall continue for one year after expiration or termination of this Agreement.

(b) By User. User shall indemnify and hold harmless Licensee and its Agents against and from any and all claims, liabilities, judgments, costs, demands, causes of action and expenses (including, without limitation, reasonable attorneys' fees) arising from: (i) any willful misconduct of User or User's Agents; or (ii) any breach or default in the terms of this Agreement by User. If any action or proceeding is brought against Licensee by reason of such claim, upon notice from Licensee, User shall defend the same at User's expense by counsel reasonably satisfactory to Licensee. The foregoing agreement by User to indemnify Licensee shall continue for one year after expiration or termination of this Agreement.



(c) Notice Required. Licensee and User each agree to give prompt written notice to the other of any claim against the Party giving notice which might give rise to a claim by it against the other Party hereto based upon the indemnity provisions contained herein, stating the nature and basis of the claim and the actual or estimated amount thereof. If any third party asserts a claim against a Party hereto which, if true, would give rise to a claim for indemnification hereunder, the Party against whom the claim is asserted shall be entitled to be indemnified against the costs and expenses of defending the claim, whether or not the claimant ultimately prevails.

11. FCC Compliance

- (a) User acknowledges that ultimate supervisory control shall remain vested in Licensee and User shall do nothing inconsistent therewith. Licensee and User each agree that they will take no action in contravention of the rules and regulations promulgated by the FCC or other governmental rules and regulations governing the Licensee or the Channels. User acknowledges that Licensee remains solely responsible for all FCC filings and dealings. However, User agrees to cooperate with Licensee in the preparation of any filing where the relevant facts are within user's possession, and to notify Licensee immediately if the FCC contacts User respecting User's operation of the System or use of the Usage Right. Licensee shall be responsible for payment of FCC regulatory fees.
- (b) Licensee and User are familiar with the rules of the FCC regarding a Licensee's responsibility under the Act and applicable FCC rules, regulations and policies. Nothing in this Agreement is intended to diminish or restrict Licensee's obligations as an FCC Licensee and both parties desire that this Agreement be in compliance with the rules and regulations of the FCC. Without limiting the foregoing, it is agreed that Licensee shall remain in *de jure* and *de facto* control of the License, including the Channels, during the Term of this Agreement. In the event that: (i) the FCC determines that any provision of this Agreement violates any FCC rule, policy or regulation; or (ii) the FCC's rules, policies or procedures change so as to either party's obligations hereunder become contrary to FCC rule, policy or regulation, then both parties will make good-faith efforts to immediately correct the problem and bring this Agreement into compliance consistent with the intent of this Agreement. If the Parties are unable to conform this Agreement to such rules, policies or procedures, either Party may terminate this Agreement.
- (c) User will use the Station only for communications permitted by the FCC's rules. User will observe all statutory and regulatory requirements governing the operation of the Station and hereby agrees to accept any FCC oversight and enforcement. User agrees that it will install and use only those mobile transmitter units, portable units, control stations and other equipment which are approved for use by the FCC.

- (d) User will operate its mobile and portable transmitter units and control stations in compliance with all technical specifications for the Licenses. User agrees to transmit the FCC call signs identifying the Licenses consistent with the FCC's rules. User shall not discontinue operations of the User Facilities for any period greater than thirty (30) days without notice to the Licensee.
- (e) User agrees to cooperate fully with any investigation or inquiry initiated by the FCC or any other competent authority regarding the User Facilities or the Licenses.
- (f) If the Licensee determines that User's employment of the Usage Right, including but not limited to, its use of mobile units, portable units, or control stations, is causing harmful interference or another violation of the FCC's rules, the Licensee has the right to terminate such unlawful operation or suspend the Usage Right as quickly as required by the FCC or other competent authority, or, if no time frame is specified by such authority, on five days' written notice. If the User does not comply with Licensee's directive pursuant to this subsection, then, in addition to and not in lieu of any other remedies, Licensee shall be entitled to immediate temporary or preliminary injunctive relief, without needing any further showing of harm and without posting any bond or surety.

12. Covenants of Both Parties.

The Parties hereto covenant and agree that:

- (a) If any of the Parties should become aware that any of its representations, warranties or covenants is inaccurate or incapable of being performed, such Party shall promptly give written notice of such inaccuracy or incapability to the other party; provided, however, that nothing contained in this Section 12(a) shall relieve the Party bound by such representation, warranty or covenant from complying with such representation, warranty, or covenant.
- (b) Both parties agree to use their best efforts to keep the terms of this Agreement confidential; provided, however, that each Party may disclose such information to its lawyers, accountants, and other representatives or as required by law or regulation or by any competent legal authority.
- (c) Either Party shall immediately notify the other Party if it receives notice of any pending or threatened action by the FCC or any other court or governmental agency or third party to suspend, revoke, terminate or challenge the License or the operation of the System.

13. Termination.

- (a) Upon Breach of Agreement by Licensee. In the event that Licensee fails to comply with any material term or obligation or breaches any representation or warranty contained in this Agreement in any material respect and does

not cure such failure or breach within thirty (30) days of receiving written notice from User thereof, then User may at its option, by written notice to Licensee, terminate this Agreement.

(b) Upon Breach of Agreement by User. In the event that User fails to comply with any material term or obligation or breaches any representation or warranty contained in this Agreement in any material respect and does not cure such failure or breach within thirty (30) days of receiving written notice from Licensee thereof, then Licensee may at its option, by written notice to User, terminate this Agreement.

(c) Upon Cancellation of License. This Agreement shall terminate automatically upon cancellation of the License.

(d) Upon Failure of Condition. This Agreement shall terminate if (i) the FCC determines that any provision of this Agreement violates any FCC rule, policy or regulation; or (ii) the FCC's rules, policies or procedures change so as to either party's obligations hereunder become contrary to FCC rule, policy or regulation, and both parties are unable to bring this Agreement into compliance consistent with the intent of this Agreement.

#### 14. Effects of Termination.

Upon termination of this Agreement:

- (a) All accrued and unpaid charges shall be due and payable and are subject to interest charges at the maximum rate allowed by law. If termination of this Agreement occurs in the middle of a month, accrued and unpaid charges will be due and payable on a pro rata basis only.
- (b) Within forty-five (45) days of termination, User shall remove the coding, frequency assignments or other features in its base stations, mobile and portable transmitter units and control stations that permit access to the Channels.
- (c) Termination shall not relieve any party of liability for damages caused by its breach of this Agreement prior to termination.

#### 15. General Provisions.

- (a) Expenses. Except as otherwise expressly provided herein, each Party to this Agreement shall pay its own expenses (including without limitation the fees and expenses of its agents, representatives, counsel, and accountants) incidental to the negotiation, drafting, and performance of this Agreement.
- (b) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Licensee, User and their respective successors and permitted assigns. User may assign this Agreement to an affiliated entity where the assignment would be deemed a *pro forma* ownership change under FCC rules, upon thirty days written notice to Licensee, without the

need for consent. As to any other assignment by User, User may not assign this Agreement without the prior written consent of Licensee, which consent cannot be unreasonably be withheld or delayed. Licensee may assign this Agreement only in conjunction with an assignment of its underlying FCC license; upon receipt of any necessary FCC approval, Licensee may assign this Agreement to the assignee of its FCC licensee concurrently therewith, on written notice to User. Any permitted assignee hereunder shall execute and deliver an instrument assuming all of the rights and obligations of the assigning Party hereunder, on or prior to the effective date of assignment.

(c) Waiver. No provision of this Agreement shall be deemed waived by course of conduct, unless such waiver is made in a writing signed by both parties stating that it is intended specifically to modify this Agreement, nor shall any course of conduct operate or be construed as a waiver of any breach of this Agreement.

(d) Entire Agreement. This Agreement constitutes the entire agreement by and among the Parties regarding the matters contemplated hereunder and there are no agreement or commitments except as expressly set forth herein.

(e) Notices. All notices, demands, requests, and other communications hereunder shall be in writing and shall be deemed to have been duly given and shall be effective upon receipt if delivered by hand, or sent by prepaid overnight express service that obtains a signature upon delivery, or by facsimile sent during regular business hours with transmission confirmed.

Notices shall be sent to the parties at the following addresses (or such other address as any Party may specify in a notice to the other Party):

Omnitrans	Mobile Relay Associates
Attn: Erin Rogers	Attn. Mark J. Abrams
1700 West 5th St	15330 Vermont Ave.
San Bernardino, CA 92411	Paramount, CA 90723
Email: erin.rogers@omnitrans.org	Fax #: 562-408-1892

(f) Amendments, Supplements, Etc. This Agreement may be amended or modified only by a written instrument executed by both parties, which states specifically that it is intended to amend or modify this Agreement.

(g) Applicable Law. This Agreement and the legal relations between the parties hereto shall be governed by and construed in accordance with the substantive laws of California without giving effect to the principles of conflict of laws thereof.

(h) Titles and Headings. Titles and headings to sections hereof are inserted for convenience of reference only, and are not intended to be a part of, or to affect the meaning or interpretation of, this Agreement.

16. Execution in Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**USER: OMNITRANS**

**LICENSEE: MOBILE RELAY ASSOCIATES**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## **SPECTRUM MANAGEMENT LEASE AGREEMENT**

### **EXHIBIT A**

#### **CHANNELS TO BE LEASED**

Call Sign	Base Transmit Frequency*	Mobile Transmit Frequency*	Bandwidth*
WPVE959	454.16875	459.16875	12.5KHz
WPVE962	454.40625	459.40625	12.5KHz
WPVE96	454.63125	459.63125	12.5KHz

\*Each frequency is designated above by its CenterPoint, including buffers and emission masks.