



**BOARD OF DIRECTORS
MAY 2, 2018
SUPPLEMENTAL INFORMATION**

ITEM #F8 JANITORIAL SERVICES
ITEM #F9 NEAR-ZERO EMISSION BUS ENGINES



CONTRACT AGREEMENT

between

CONTRACTOR
Commercial Cleaning Systems
3001 Red Hill Avenue #6-200
Costa Mesa, CA 92626

(hereinafter "CONTRACTOR")
Telephone: (949) 261-1234
Email:
dholladay@commercialcleaningsystems.com

And

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

CONTRACT DOCUMENTS

CONTRACT NO. MNT18-74

JANITORIAL SERVICES

Contract Amount: \$861,056

Omnitrans Project Manager:

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

Contract Administrator:

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



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ATTACHMENT A – SCOPE OF WORK

ATTACHMENT B - REGULATORY REQUIREMENTS

ATTACHMENT C - PRICING

This Agreement is made and entered into as of this 1st day of June, 2018 and between Omnitrans (hereinafter referred to as "OMNITRANS") and Commercial Cleaning Systems, Inc. (hereinafter referred to as "CONTRACTOR").

RECITALS

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

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

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

1. SCOPE OF WORK

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

2. PERIOD OF PERFORMANCE

The term of this Agreement shall be from the date of execution of this Agreement and continue in effect through May 31, 2021, unless terminated as specified in Section 10 and 11 of this Agreement. Omnitrans has no obligation to purchase any specified amount of products/services. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

Omnitrans' election to extend the Agreement beyond the Initial Term shall not diminish its right to terminate the Agreement for Omnitrans' convenience or CONTRACTORS default as provided elsewhere in this Agreement. The "maximum term" of this Agreement shall be the period extended from June 1, 2021 through May 31, 2023, which period encompasses the Initial Term and the Option Year One and Option Year Two.

3. CONTRACT OPTIONS

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

4. COMPENSATION

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

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Eight Hundred Sixty One Thousand and Fifty Six Dollars (\$861,056), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

5. INVOICING AND PAYMENT

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

CONTRACTOR shall submit invoices in duplicate to:

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

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

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

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

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

C. TITLE

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

6. AUDIT AND INSPECTION OF RECORDS

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

7. NOTIFICATION

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

To OMNITRANS:

Omnitrans
1700 West Fifth Street
San Bernardino, CA 92411
Attn: Krystal N. Turner
Title: Contract Administrator
Krystal.turner@omnitrans.org

To CONTRACTOR:

Commercial Cleaning Systems
3001 Red Hill Avenue #6-200
Costa Mesa, CA 92626
Attn: Dana Holladay
Senior Vice President
Dholladay@commercialcleaningsystemsnet

8. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES

A. OMNITRANS' Project Manager

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

Project Manager: Mark Montgomery, Facilities Manager

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

B. Contractor's Key Personnel

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

<u>Name</u>	<u>Role</u>
Cameron Hall	Vice President
Sebastian Pedreira	Account Manager
Enrique Guerra	Senior Night Manager
Francisco Martinez	Night Manager
Salvador Martinez	Day Service Manager

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

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

9. DISPUTE RESOLUTION

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

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

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

10. TERMINATION FOR CONVENIENCE

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

11. TERMINATION FOR BREACH OF AGREEMENT

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

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

12. ASSIGNMENT

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

13. SUBCONTRACTING

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

CONTRACTOR shall not, without the express written consent of Omnitrans, either:

- a. Substitute any person, firm, or corporation as subcontractor in place of the subcontractors identified below; or
- b. Permit any subcontract to be assigned or transferred; or
- c. Allow work to be performed by anyone other than the original subcontractor listed below.

Subcontractor's Name and Address

Work to Be Performed

N/A

14. INDEPENDENT CONTRACTOR

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

15. INSURANCE

A. INSURANCE REQUIREMENTS

1) General Requirements for Contractor

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

2) Deductibles or Self-Insured Retention (SIR)

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

3) Other Insurance Provisions

a. Commercial General Liability and Automobile Liability

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury covering claims which may arise from or out of Contractor's performance of its obligations hereunder and if Contractor's vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then Contractor shall maintain liability insurance for all owned, non-owned or hired vehicles so used. Policy

shall name Omnitrans, its officers, officials, employees, agents and volunteers as additional insured as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations of the scope of protection afforded Omnitrans, its officers, officials, employees, agents, and volunteers.

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

b. Workers' Compensation

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

c. Care, Custody, and Control

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

4) Acceptability of Insurers

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

5) Verification of Coverage

- a. Contractor shall furnish Omnitrans with original endorsements affecting coverage required by this clause. The endorsements are

to be signed by a person authorized by that insurer to bind coverage on its behalf. All insurance certificates and endorsements are to be received and approved by Omnitrans before work commences.

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

6) **Subcontractors**

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

7) **Notification of Terminated Insurance**

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

B. **MINIMUM INSURANCE COVERAGE**

If the Contractor maintains broader coverage and/or higher limits than the minimum requirements shown below, Omnitrans requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor.

- 1) ☒ **Commercial General Liability including Products/Completed Operations:** \$1,000,000; per occurrence for bodily and property damage liability and \$2,000,000 aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- 2) ☒ **Automobile Liability:** \$1,000,000; per occurrence for bodily and property damage liability and aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- 3) ☐ **Errors and Omissions Liability:** \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$ 3,000,000 aggregate or,
- 4) ☐ **Professional Liability:** \$1,000,000; per occurrence and aggregate.
- 5) ☒ **Workers' Compensation:** statutory limits or,

- 6) ☐ **Self Insurance Program:** a State Approved program in an amount and form that meets all applicable requirements of the Labor Code of the State of California.
- 7) ☒ **Employer's Liability:** \$1,000,000; per occurrence.
- 8) ☐ **Environmental Liability:** \$1,000,000; per occurrence and aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- 9) ☐ **Umbrella Policy:** \$4,000,000; per occurrence and aggregate Additional coverage for the above policies, *Omnitrans Additional Insured.*
- 10) ☐ All drivers making deliveries of products specified on this solicitation shall have Hazardous Materials Endorsements on their Commercial Drivers License, and such other Endorsements as may be required by relevant laws and/or regulations.

16. INDEMNITY

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

17. REVISIONS IN SCOPE OF WORK

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

18. RIGHTS IN TECHNICAL DATA

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

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

19. OWNERSHIP OF REPORTS AND DOCUMENTS

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

20. OWNERSHIP RIGHTS

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

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

21. WORK FOR HIRE

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

22. SUBMITTAL OF CLAIMS BY CONTRACTOR

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

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

23. EQUAL OPPORTUNITY

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

24. STANDARD OF PERFORMANCE

- A. CONTRACTOR shall perform and exercise, and require its subcontractors to perform and exercise due professional care and competence in the performance of the Work in accordance with the requirements of this Agreement. CONTRACTOR shall be responsible for the professional quality, technical accuracy, completeness and coordination of the Work, it being understood that OMNITRANS will be relying upon such professional

quality, accuracy, completeness and coordination in utilizing the Work. The foregoing obligations and standards shall constitute the "Standard of Performance" for purposes of this Agreement. The provisions of this paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.

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

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

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

26. DISQUALIFYING POLITICAL CONTRIBUTIONS

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

27. COMPLIANCE WITH LAW

- A. CONTRACTOR shall familiarize itself with and perform the Work required under this Agreement in conformity with requirements and standards of OMNITRANS, municipal and public agencies, public and private utilities, special districts, and railroad agencies whose facilities and work may be

affected by Work under this Agreement. CONTRACTOR shall also comply with all Federal, state and local laws and ordinances.

- B. Government regulations that directly affect the CONTRACTOR'S performance of this contract and unforeseen impacts, which neither party could have contemplated at the onset of the contract and have an unconscionable impact on the CONTRACTOR may be given special pricing consideration. The parties, in good faith, shall review established rates and may adopt any mutually agreed new rates, which shall only be effective as agreed upon by the parties. Thorough documentation including all cost elements is required to support the Contractor's claim to any relief under this clause.

28. COMPLIANCE WITH LOBBYING POLICIES

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

29. PUBLIC RECORDS ACT

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

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

30. WAIVER/INVALIDITY

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

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

31. FORCE MAJEURE

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

32. CONFIDENTIALITY

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

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

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

way imply that OMNITRANS endorses CONTRACTOR's firm, service, and/or product.

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

34. GOVERNING LAW

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

35. MODIFICATIONS TO AGREEMENT

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

36. LICENSING, PERMITS AND INSPECTION COSTS

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

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

37. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, and any and all of its Amendments, Appendices, Exhibits and Attachments; (2) provisions of RFP-MNT18-74 and any and all of its Addenda, Appendices, Exhibits and Attachments; and (3) CONTRACTOR's proposal dated March 15, 2018, Best and Final Offer dated April 10, 2018 and its Appendices, Exhibits, Attachments.

38. ENTIRE AGREEMENT

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

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

OMNITRANS

COMMERCIAL CLEANING SYSTEMS,
INC.

P. Scott Graham
CEO/General Manager

Name:
Title:

Date

Date

Federal Tax I.D. No. 46-4215198

ATTACHMENT A – SCOPE OF WORK
MNT18-74
JANITORIAL SERVICES

1. GENERAL REQUIREMENTS

A. Contractor shall furnish all necessary labor, supervision, material, equipment, and supplies to satisfactorily perform janitorial services at the following Omnitrans facilities:

- East Valley: 1700 West 5th Street, San Bernardino, CA 92411
- San Bernardino Transit Center (SBTC):
 - Bus Side: 599 West Rialto Ave, San Bernardino, CA 92410
 - Metrolink Side: 174 E-Street, San Bernardino, CA 912410
- West Valley: 4748 Arrow Highway, Montclair, CA 91763
- Montclair Transportation Center: 5091 Richton Street, Montclair, CA 91763

B. As the primary public transportation provider for San Bernardino County, California, Omnitrans takes pride in providing an exceptionally clean and safe environment at all times for its patrons and employees, and expects Contractor to demonstrate this same pride in their work performed.

C. Contractor shall maintain the premises of all facilities at an optimum level of cleanliness at all times. These specifications, therefore, shall be a guide for, rather than a limitation to, the services required to effectively maintain the facilities.

D. Omnitrans' East Valley Administration, Operations, and Maintenance Buildings. Contractor shall provide all equipment, labor, and materials to perform monthly & quarterly specific janitorial services as prescribed herein. The East Valley Facility has approximately 440 employees.

1. The following is a breakdown in square feet of the size of the facility, and approximate square feet of the floor surfaces.

- | | | |
|------|-----------------------------------|------------------------------------|
| a. | Administration Building | 23,769 Total Building Square Feet |
| i. | Carpeted Areas | 15,125 square feet |
| ii. | Ceramic Tile Areas | 990 square feet |
| iii. | Ceramic Tile Walls | 1,798 square feet |
| b. | Maintenance & Operations Building | 111,364 Total Building Square Feet |
| i. | Carpeted Areas | 15,380 square feet |
| ii. | Ceramic Tile Areas | 2,287 square feet |
| iii. | Ceramic Tile Walls | 2,803 square feet |

ATTACHMENT A – SCOPE OF WORK
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JANITORIAL SERVICES

iv. VCT 7,482 square feet

E. Omnitrans' West Valley Operations Building, Maintenance Building, and Montclair Transportation Center Contractor shall provide all equipment, labor, and materials to perform full janitorial services as prescribed herein. The West Valley Facility has approximately 205 employees. The Montclair Transportation Center has a single uni-sex restroom shared by drivers only from multiple transportation agencies.

1. The following is a breakdown in square feet of the size of the facility, and approximate square feet of the floor surfaces.

- a. Operations Building 7,835 square feet
 - i. Carpeted Areas 3,500 square feet
 - ii. Tile Areas 4,335 square feet
- b. Maintenance Building 20,475 square feet
 - i, Carpeted Areas 225 square feet
 - ii, Tile Areas 1,000 square feet
- c. Transportation Center 150 square feet

F. Omnitrans' San Bernardino Transportation Center (Bus & Metrolink side). Contractor shall provide all equipment, labor, and materials to perform full janitorial services as prescribed herein. The Transportation Center Facility has approximately 25 employees and is open to the public. The Metrolink side has approximately 20 employees and is not open to the public.

1. The following is a breakdown in square feet of the size of the facility, and approximate square feet of the floor surfaces.

- a. Transportation Center (Bus Side) 6718 square feet
 - i. Carpeted Areas 957 square feet
 - ii. Tile Areas 1,259 square feet
 - iii. Polished Concrete 2,688 square feet
 - iv. Rubber Floor Surfaces 895 square feet
- e. Transportation Center (Metrolink Side) 4200 square feet

ATTACHMENT A – SCOPE OF WORK
MNT18-74
JANITORIAL SERVICES

- | | |
|---------------------|------------------|
| i. Tile Areas | 300 square feet |
| ii. Sealed Concrete | 3900 square feet |

2. CONTRACT COORDINATION

- A. Contractor shall identify a Quality Control Manager who will visit each facility three times weekly.
- B. The Janitorial Discrepancy Sheet should be reviewed daily by the on-site janitorial supervisor and addressed as soon as possible.
- C. Contractor will distribute to the Facility Manager or Facility Supervisor a master cleaning schedule (two weeks prior to monthly, quarterly, semi-annual, and annual) to include, but not be limited to: floor waxing, carpet shampooing, steam cleaning, and daily operations, both on base and transportation centers.
- D. Due to the disruptive nature of the activity, all floor waxing and carpet cleaning, other than vacuuming, shall occur after the end of the business day. This is normally 6:00 p.m., but may vary due to changes in activities and shifts. Contractor shall supply a schedule of these activities to the Facility Manager or Facility Supervisor at least two weeks before they begin.
- E. Contractor shall provide service at the San Bernardino Transit Center (Bus & Metrolink sides), Montclair Transportation Center, and West Valley locations every day except on the six days that Omnitrans is closed for recognized holidays (New Year day, Memorial Day, Independence Day, Labor Day, Thanksgiving, & Christmas Day). Contractor will ensure that their personnel are present for two (2) four (4) hour periods (the morning period will be from 6:00 a.m. to 10 a.m., and the afternoon period from 2:00 p.m. to 6:00 p.m.) for the West Valley location, and for a thirteen-and-a-half-hour period between the hours of 8:00 a.m. and 9:30 p.m. for the San Bernardino Transportation Center (Bus side). Hours needed for the Metrolink side are over and above the 13.5 hours allocated for the Bus side.
- F. Contractor shall provide service to the Montclair Trans Center restroom every day except the six Omnitrans recognized holidays. Twice Daily Service (Once during normal business hours and once after normal business hours)
- G. Contractor, or responsible representative authorized to make decisions, will meet with Omnitrans' Facility Manager or Facility Supervisor on a day and time mutually agreed upon to review quarterly Janitorial Service Inspection Reports (refer to Article 5) for the East Valley facility and the weekly Janitorial Service

ATTACHMENT A – SCOPE OF WORK
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JANITORIAL SERVICES

Inspection Reports for West Valley facility, Montclair Transportation Center, San Bernardino Transportation Center, and any other matters pertaining to contract performance.

- H. Contractor shall provide weekly field supervision to ensure janitorial staff arrive at assigned post on time, perform their duties throughout their assigned shift, and provide backup as needed during all required hours.

3. STANDARDS OF PERFORMANCE

- A. Contractor shall furnish a qualified labor force sufficient to satisfactorily complete all specific requirements in the prescribed period.
- B. Contractor is required to have at least one employee at the location specified in this scope of work, while work is in progress, which speaks and understands the English language. When there is more than one Contractor's employee on location, one must be designated as the Contractor's on-site representative, and the Contractor's representative, must speak and understand the English language.
- C. Both parties understand and agree that only the highest standards of cleanliness are acceptable as found in ISSA and APPA Industry Standards. The level of cleanliness shall be "exceeds standard" and the general impression is one of ordinary tidiness. The General and Specific Requirements are not all inclusive. All items not included but found necessary to properly clean the Agency's facilities, shall be done. The Facility Manager or Facility Supervisor shall assess the performance of the Contractor.
- D. If the Contractor's performance is unsatisfactory, the Agency will verbally advise the Contractor and allow 24 hours to correct deficiencies. If the Contractor does not correct deficiencies within the 24-hour time limit, the Agency will give the Contractor a written notice with a deadline date.
 - 1. Failure to comply by the deadline date will result in service credits as stated below:
 - a. First Occurrence - 5% of monthly invoice
 - b. Second Occurrence - 10% of monthly invoice
 - c. Third Occurrence - 15% of monthly invoice and basis for contract review and corrective action.

ATTACHMENT A – SCOPE OF WORK
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JANITORIAL SERVICES

2. If the Contractor has not received a service credit within a continuous six-month period, then one occurrence will be dropped. Agency shall not reimburse the Contractor for any penalized work.
 - E. If certain Omnitrans areas are inaccessible to Contractor as a result of Omnitrans' operations, and prior notification and alternative scheduling were not initiated by Omnitrans' Project Manager, Contractor shall notify Omnitrans' Facility Manager or Facility Supervisor and prepare an alternative schedule for services. Omnitrans will not deduct for work performed when Omnitrans' operations prevent satisfactory performance of service(s), provided Contractor notifies Omnitrans' Facility Manager or Facility Supervisor within a reasonable time period (24 hours or less) that the area was inaccessible during the scheduled cleaning time.
 - F. Contractor's employees shall wear a work uniform that is common, distinguishable, professional, and clean, without tatter and is suitable for seasonal change when performing services on Omnitrans' property. Uniforms are to be provided by Contractor.
 - G. Contractor's employees shall be in good health and able to perform the specified duties.
 - H. Contractor will not use convict labor.
 - I. Contractor agrees to immediately remove from all Omnitrans facilities premises any Contractor's employee whose conduct or workmanship is unsatisfactory, as determined solely by the Facility Manager or Facility Supervisor.
4. EQUIPMENT AND SUPPLIES
- A. Equipment
 1. Contractor shall furnish, at its expense, all equipment necessary to properly perform specified work. This should include, but not limited to, buffing machines, industrial type vacuum cleaners, carpet extractors, floor scrubbers, lifts, ladders, etc. Equipment shall be maintained in good and safe working condition and, when not in use, shall be properly secured in areas provided by the Agency. Large equipment such as steam cleaners shall be removed from Agency's property when not in use, unless otherwise approved by the Agency. Contractor shall provide a floor scrubber machine for servicing the West Valley maintenance garage floor and store it on-site in a designated area.

ATTACHMENT A – SCOPE OF WORK
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JANITORIAL SERVICES

2. The Agency has dumpsters on-site for trash disposal.

B. Supplies

1. Contractor shall furnish, at its expense, all cleaning supplies necessary to properly perform specified work and maintain established cleaning and sanitary standards. All cleaning products are to be “green products” and deemed to be environmentally friendly. Technical cut sheets and Safety Data Sheets (SDS) are required for all cleaning supplies used by the Contractor before services can begin. Any time there is a change in supplies; a new technical cut sheet and SDS must be submitted and approved in advance of the planned change. Omnitrans retains the right to require the Contractor to change any item when it has been determined by the Facility Manager or Facility Supervisor that item does not meet acceptable performance, necessary safety standards and applicable air quality rules such as the South Coast Air Quality Management District’s (SCAQMD) requirements for volatile organic compounds.
 - a. West Valley and Montclair Transportation Center. Contractor shall provide all paper towels, toilet paper, toilet seat covers, hand soap, hand sanitizer, wall mounted air fresheners, and feminine hygiene products. Contractor shall provide new dispensers for paper towels, hand soap, and hand sanitizer products as needed (the dispensers shall be of the “hands free” type). Contractor shall collect all monies from the sale of feminine hygiene and retain them for their use. Contractor shall not install additional dispensers without the knowledge and approval of the Project Manager. .
 - b. San Bernardino Transportation Center (*Bus & Metrolink sides). Contractor shall provide all paper towels, toilet paper, toilet seat covers, door handle tissue, hand soap, hand sanitizer, wall mounted air fresheners, and feminine hygiene products. Contractor shall provide new dispensers for paper towels, hand soap, and hand sanitizer products as needed (the dispensers shall be of the “hands free” type). Contractor shall collect all monies from the sale of feminine hygiene and retain them for their use. Contractor shall not install additional dispensers without the knowledge and approval of the Project Manager.

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* On the bus side public restrooms, stainless steel vandal proof toilet paper, toilet seat covers, and hand soap dispensers have been installed and must be retained (contractor to use appropriate products for these dispensers).

2. No cleaning chemicals shall be used that will cause damage to finishes of painted surfaces, tile, or plumbing fixtures.
3. Contractor is responsible for purchasing and supplying sanitary napkins to be placed in Agency's furnished dispensers in all women's restrooms. Contractor shall retain all funds collected from the sale of the sanitary napkins.
4. Storage
 - a. East Valley facility – No storage areas are available for use.
 - b. West Valley facility – Three (3) custodial closets available for use.
 - c. San Bernardino Transit Center (SBTC): Bus Side – Two (2) custodial closets and one (1) storage room available for use.
 - d. SBTC: Metrolink side – One (1) custodial closet available for use.
5. No provisions are made for the storage of equipment or supplies at the Montclair Trans Center. Contractor will be required to bring all equipment and supplies on a daily basis to service the restroom. When completed with the service, all equipment and extra supplies shall be removed.

5 JANITORIAL SERVICE INSPECTION REPORT

The Agency shall use this report to verify which services were, or were not, provided and/or satisfactorily performed as called for herein. A copy of the report shall be provided to the Contractor. Should any noted deficiencies not be immediately corrected, the Agency shall institute the service credits as outlined in Article 3. For the purpose of clarity and this agreement, the term "immediately corrected" as noted above, is determined to be within 24 hours or less.

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6. SECURITY

- A. The Agency will furnish keys and/or access cards for facilities as are deemed necessary. Contractor or Contractor's employees may not duplicate any keys or access cards. Contractor shall be held accountable and responsible for all keys and access cards issued. Replacement cost of lost keys and access cards will be the Contractor's responsibility. Additionally, the Contractor may be held responsible for the cost of re-keying locks that were operable by the key(s) that were lost or misplaced.
- B. Contractor's employees shall not disturb documents, or any other item on desks, tables, file cabinets, etc., or use telephones, radios, television sets, or tamper with personal or Agency's property.
- C. Contractor is responsible for immediately reporting anything out of the ordinary to the Facilities Manager or Facilities Supervisor.
- D. Contractor's employees will wear in a conspicuous, external fashion and at all times while on Agency premises, an identification badge which includes employee name, employee's picture and Contractor's company name. Identification badges are to be provided by Contractor.

7. SAFETY AND ACCIDENT PREVENTION

- A. In performing any work under this agreement on premises, which are under the direct control of the Agency, the Contractor shall: (1) conform to all safety rules and requirements prescribed by the Agency's Contractor/Vendor Safety Contract Specifications; and (2) take such additional precautions as the Agency may reasonably require for safety and accident prevention purposes. Contractor agrees to take all reasonable steps and precautions to prevent accidents and preserve the life and health of Contractor and Agency's personnel performing or in any way coming in contact with the performance of the agreement on such premises. Any violation of such rules and requirements, unless promptly corrected, as directed by the Facility Manager or Facility Supervisor, shall be grounds for termination of this agreement in accordance with the default provisions hereof.
- B. Contractor's employees assigned to perform work at any of the Omnitrans vehicle maintenance and service facilities are required to wear steel toe, non-skid footwear. Athletic type footwear is NOT considered acceptable.
- C. Contractor's employees may not use any object other than a commercially manufactured doorstep to prop open doors while working on Agency's premises.

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Contractor will be held responsible for repayment of damage to floor and/or door if unapproved doorstop is used.

8. DESCRIPTION OF WORK & LOCATIONS

A. EAST VALLEY ADMINISTRATION, OPERATIONS, AND MAINTENANCE BUILDINGS

1. RESTROOMS

a. Monthly Service

- i. Scrub tile floor surfaces using approved cleaning products.

b. Quarterly Service

- i. Clean walls, partitions, doors and door hardware with approved cleaner.

2. OFFICE SPACES

a. Quarterly Service

- i. Clean window blinds.
- ii. Vacuum clean upholstered furniture.

b. Annual Service (June)

- i. Clean designated cloth covered furniture with approved upholstery cleaner.

3. HALLWAYS/STAIRWAYS/LOBBY AREAS/ELEVATORS

a. Monthly Service

- i. Clean, wax and power buff vinyl and tile floor surfaces using approved cleaning products.

b. Quarterly Service

- ii. Strip, clean, wax and power buff vinyl and tile floor surfaces using approved cleaning products.

4. CONFERENCE AND TRAINING SPACES AND GUARD OFFICE

a. Quarterly Service

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- i. Clean window blinds.
 - ii. Vacuum upholstered furniture.
- b. Annual Service (June)
 - i. Clean designated cloth covered furniture with approved upholstery cleaner.

5. WINDOW CLEANING

- a Quarterly (January, April, July and October)
 - i. Clean building interior and exterior windows on each building located on campus.

6. CARPET CLEANING

- a. Quarterly
 - i. Contractor shall clean all carpet in the manner specified (soil extraction, rotary spin bonnet or other method developed by the industry) consistent with carpet manufacturer recommendations.
 - ii. Any residue from carpet cleaning that gets on walls and baseboards will be completely cleaned by Contractor.
 - iii. All carpet cleaning shall be done after normal working hours and be scheduled by Omnitrans Facility Manager or his designee.

B. SAN BERNARDINO TRANSPORTATION CENTER (Bus & Metrolink sides).

1. RESTROOMS

- a. Daily Service (Bus Side – 7 days per week, Metrolink Side – 5 days per week)
 - i. Clean and sanitize toilet, urinal, sink fixtures and hardware with approved cleaner.
 - ii. Clean mirrors, shelves, benches, and sink counters with a non-abrasive cleaner.
 - iii. Sweep and wet mop floor with approved cleaning agent.

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- iv. Replenish toilet paper, toilet seat covers, paper hand towels, waterless hand cleaner, urinal screen deodorant, liquid hand soap, and sanitary napkins as necessary.
 - v. Empty and clean trash containers and replace plastic liners as necessary.
- b. Weekly Service
 - i. Clean dirt and lint from ceiling and wall vents as required.
 - ii. Clean walls, partitions, doors and door hardware with approved cleaner.
 - iii. Clean the outside of storage lockers.
- c. Monthly Service
 - i. Replace wall mounted deodorant spray cans as required.
 - ii. Clean all ceramic tile surfaces with approved cleaner.
 - iii. Clean ceiling light fixtures, wall-mounted lighting fixtures and covers as required.

2. OFFICE SPACES

- a. Daily Service
 - i. Vacuum and spot clean carpet (move furniture as necessary).
 - ii. Sweep and damp mop vinyl floors.
 - iii. Sweep and wet mop concrete floor with approved cleaning agent.
 - iv. Clean walls, doors and door hardware to remove accumulated dust, handprints, kick marks, etc.
 - v. Wipe seat and backrest of vinyl/plastic furniture with approved cleaner.
 - vi. Wipe clean wooden, vinyl covered, and metal chair armrests.

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- vii. Empty and clean trash containers and replace plastic liners as necessary.
 - b. Weekly Service
 - i. Clean both sides of glass windows in partitioned offices including windowsills and frames.
 - ii. Clean dirt and lint from ceiling, wall vents and light fixtures as required.
 - c. Monthly Service
 - i. Polish desktops and wooden furniture.
 - ii. Vacuum clean upholstered furniture.
 - iii. Dust picture frames (wall mounted) and clean glass covers.
 - d. Quarterly Service
 - i. Clean all carpets with an accepted and approved cleaning system.
 - iii. Clean window blinds.
 - e. Annual Service
 - i. Clean designated cloth covered furniture with approved upholstery cleaner.
- 3. EMPLOYEE LUNCHROOM/LOUNGE/RECREATION
 - a. Daily Service
 - i. Sweep and wet mop vinyl floor with approved cleaning agent.
 - ii. Clean and sanitize sinks, sink counters and sink hardware with approved cleaning agent.
 - iii. Clean food preparation/heating appliances.
 - iv. Wipe clean exterior of vending machines, refrigerators, freezers and cabinets.

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- v. Clean tabletops and seats (includes furniture located on adjacent exterior patios).
- vi. Clean walls, doors and door hardware.
- vii. Wipe clean all furniture not specifically identified in numbers v. and vi.
- viii. Empty and clean trash containers and replace plastic liners as necessary.
- ix. Clean and sanitize public telephones.
- x. Sweep and remove trash/debris from outside lunchroom patio.
- xi. Spot clean interior and exterior of glass windows and doors.
- b. Weekly Service
 - i. Clean exterior of windows.
 - ii. Clean and sanitize interior of refrigerators.
 - iii. Clean and sanitize microwaves.
- c. Monthly Service
 - i. Clean legs of all tables and chairs.
 - ii. Clean dirt and lint from ceiling and wall vents as required.
 - iii. Clean ceiling lighting fixtures, wall-mounted lighting fixtures and covers as required.

4. HALLWAYS/LOBBY AREAS

- a. Daily Service
 - i. Sweep and wet mop vinyl, tile and concrete surface with approved cleaning agent.
 - ii. Wipe clean handrail.
 - iii. Clean wall surface to remove accumulated dust, handprints, kick marks, etc.
 - iv. Clean and sanitize public telephones.

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- v. Empty and clean trash containers and replace plastic liners as necessary.
 - vi. Spot clean interior and exterior glass on all first floor entrance/exit doors.
 - vii. Clean and sanitize drinking fountains.
 - b. Monthly Service
 - ii. Clean ceiling light fixtures, wall-mounted lighting fixtures and covers.
 - iii. Clean ceiling and wall vents.
- 5. BUILDING INTERIOR / EXTERIOR (GENERAL)
 - a. Daily Service
 - i. Remove and dispose of all trash on walkways, roadway gutters bus and train platforms and in landscaped areas.
 - ii. Clean accumulated dust, dirt, etc., from walls and doors.
 - iii. Empty all exterior trash cans and cigarette urns.
 - b. Outside Trash Enclosures
 - i. Daily clean up trash from ground in and around dumpsters.
- 6. WINDOW CLEANING
 - a. Quarterly (January, April, July and October)
 - i. Clean building interior and exterior windows on each building located on campus.
- C. WEST VALLEY OPERATIONS BUILDING, MAINTENANCE BUILDING & TRANSPORTATION CENTER
 - 1. RESTROOMS
 - a. Daily Service
 - i. Clean and sanitize toilet, urinal, sink fixtures and hardware with approved cleaner.

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JANITORIAL SERVICES

- ii. Clean mirrors, shelves, benches, and sink counters with a non-abrasive cleaner.
 - iii. Sweep and wet mop floor with approved cleaning agent.
 - iv. Replenish toilet paper, toilet seat covers, paper hand towels, waterless hand cleaner, urinal screen deodorant, liquid hand soap, and sanitary napkins as necessary.
 - v. Empty and clean trash containers and replace plastic liners as necessary.
- b. Weekly Service
 - i. Clean dirt and lint from ceiling and wall vents as required.
 - ii. Clean walls, partitions, doors and door hardware with approved cleaner.
 - iii. Clean the outside of storage lockers.
- c. Monthly Service
 - i. Replace wall mounted deodorant spray cans as required.
 - ii. Clean all ceramic tile surfaces with approved cleaner.
 - iii. Clean ceiling light fixtures, wall-mounted lighting fixtures and covers as required.

2. OFFICE SPACES

- a. Daily Service
 - i. Vacuum and spot clean carpet (move furniture as necessary).
 - ii. Sweep and damp mop vinyl floors.
 - iii. Sweep and wet mop concrete floor with approved cleaning agent.
 - iv. Clean walls, doors and door hardware to remove accumulated dust, handprints, kick marks, etc.

ATTACHMENT A – SCOPE OF WORK

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JANITORIAL SERVICES

- v. Wipe seat and backrest of vinyl/plastic furniture with approved cleaner.
 - vi. Wipe clean wooden, vinyl covered, and metal chair armrests.
 - vii. Empty and clean trash containers and replace plastic liners as necessary.
 - b. Weekly Service
 - i. Clean both sides of glass windows in partitioned offices including windowsills and frames.
 - ii. Clean dirt and lint from ceiling, wall vents and light fixtures as required.
 - c. Monthly Service
 - i. Polish desktops and wooden furniture.
 - ii. Vacuum clean upholstered furniture.
 - iii. Dust picture frames (wall mounted) and clean glass covers.
 - iv. Clean, wax and power buff vinyl and tile floor surfaces using approved cleaning products.
 - d. Quarterly Service
 - i. Clean all carpets with an accepted and approved cleaning system.
 - ii. Strip, clean, wax and power buff vinyl and tile floor surfaces using approved cleaning products.
 - iii. Clean window blinds.
 - e. Annual Service
 - i. Clean designated cloth covered furniture with approved upholstery cleaner.
3. EMPLOYEE LUNCHROOM/LOUNGE/RECREATION
- a. Daily Service

ATTACHMENT A – SCOPE OF WORK

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JANITORIAL SERVICES

- i. Vacuum and spot clean carpet with capture dry clean system.
- ii. Sweep and wet mop vinyl floor with approved cleaning agent.
- iii. Clean and sanitize sinks, sink counters and sink hardware with approved cleaning agent.
- iv. Clean food preparation/heating appliances.
- v. Wipe clean exterior of vending machines, refrigerators, freezers and cabinets.
- vi. Clean tabletops and seats (includes furniture located on adjacent exterior patios).
- vii. Clean walls, doors and door hardware.
- viii. Wipe clean all furniture not specifically identified in numbers v. and vi.
- ix. Empty and clean ash trays.
- x. Empty and clean trash containers and replace plastic liners as necessary.
- xi. Clean and sanitize public telephones.
- xii. Sweep and remove trash/debris from outside lunchroom patio.
- xiii. Spot clean interior and exterior of glass windows and doors.
- b. Weekly Service
 - i. Clean exterior of windows.
 - ii. Clean and sanitize interior of refrigerators.
 - iii. Clean and sanitize microwaves.
- c. Monthly Service

ATTACHMENT A – SCOPE OF WORK

MNT18-74

JANITORIAL SERVICES

- i. Clean, wax and power buff vinyl and tile floors with approved cleaning products.
- ii. Vacuum upholstered furniture.
- iii. Clean legs of all tables and chairs.
- iv. Clean dirt and lint from ceiling and wall vents as required.
- iv. Clean ceiling lighting fixtures, wall-mounted lighting fixtures and covers as required.
- d. Quarterly Service
 - i. Strip, clean, wax and power buff vinyl and tile floors with approved cleaning products.

4. HALLWAYS/LOBBY AREAS

- a. Daily Service
 - i. Vacuum and spot clean carpet with capture dry clean system.
 - ii. Sweep and wet mop vinyl, tile and concrete surface with approved cleaning agent.
 - iii. Wipe clean handrail.
 - iv. Clean wall surface to remove accumulated dust, handprints, kick marks, etc.
 - v. Clean and sanitize public telephones.
 - vi. Empty and clean trash containers and replace plastic liners as necessary.
 - vii. Spot clean interior and exterior glass on all first floor entrance/exit doors.
 - viii. Clean and sanitize drinking fountains.
- b. Monthly Service
 - i. Clean, wax and power buff vinyl and tile floor surfaces.

ATTACHMENT A – SCOPE OF WORK
MNT18-74
JANITORIAL SERVICES

- ii. Clean ceiling light fixtures, wall-mounted lighting fixtures and covers.
 - iii. Clean ceiling and wall vents.
 - c. Quarterly Service
 - i. Strip, clean, wax and power buff vinyl and tile floors with approved cleaning products.
- 5. CONFERENCE AND TRAINING SPACES
 - a. Daily Service
 - i. Vacuum and spot clean carpet with capture dry clean system.
 - ii. Sweep and wet mop vinyl and concrete surface with approved cleaning agent.
 - iii. Clean walls, doors and door hardware to remove accumulated dust, handprints, kick marks, etc.
 - iv. Clean table, desk and workbench tops.
 - v. Clean vinyl and plastic chair seats and backrests.
 - vi. Clean wall and pedestal mounted writing boards.
 - vii. Empty and clean trash containers and replace plastic liner as necessary.
 - b. Monthly Service
 - i. Polish conference room tabletop
 - ii. Clean table and chair leg assemblies.
 - iii. Clean, wax and power buff vinyl and tile floor surfaces.
 - iv. Vacuum upholstered furniture.
 - v. Clean ceiling lighting fixtures, wall-mounted lighting fixtures and covers as required.
 - vi. Clean dirt and dust from ceiling and wall vents as required.

ATTACHMENT A – SCOPE OF WORK
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JANITORIAL SERVICES

- c. Quarterly Service
 - i. Strip, clean, wax and power buff vinyl and tile floors with approved cleaning products.
 - ii. Clean window blinds.
 - d. Annual Service (June)
 - i. Clean designated cloth covered furniture with approved upholstery cleaner.
6. BUS MAINTENANCE GARAGE/PARTS AREAS
- a. Daily Service
 - i. Empty all trash cans and replace the plastic liners as required.
 - ii. Pick up trash around the building exterior.
 - iii. Clean and sanitize the drinking fountains.
 - iv. Mop up oil spots on the shop floor.
 - v. Sweep floors.
 - b. Weekly Service
 - i. Clean patio and patio furniture.
 - ii. Wipe handprints off of all shop doors.
 - iii. Dry mop the parts area.
 - iv. Dust flat surfaces around and including the mailboxes.
 - v. Clean the Vidmar countertop in front of maintenance supervisor's office.
 - vi. Scrub floors.
 - c. Monthly Service
 - i. Clean both shop pits including the safety rails.
 - ii. Clean the welding area.

ATTACHMENT A – SCOPE OF WORK
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JANITORIAL SERVICES

- iii. Clean the lift saddles on the floor hoists.
 - d. Quarterly Service
 - i. Clean the light diffusers.
 - ii. Clean the shop walls up to 10 feet from the floor.
 - iii. Clean the computer server room.
 - e. Semi-Annual Service
 - i. Dust the shop walls above the 10-foot level.
 - ii. Remove cobwebs from ceiling corners and channels.
 - iii. Sweep out the main electrical closet.
 - iv. Clean the overhead conduits and piping.
- 7. FUEL ISLAND
 - a. Daily Service
 - i. Replenish paper towel products for window washing stations as needed (Utilize existing dispensers).
 - ii. Replenish hand sanitizer as needed.
- 8. BUILDING EXTERIORS (GENERAL)
 - a. Daily Service
 - i. Remove and dispose of all trash on walkways, roadway gutters and in landscaped areas.
 - ii. Clean accumulated dust, dirt, etc., from walls and doors.
 - iii. Empty all exterior trash cans and cigarette urns.
 - b. Outside Trash Enclosures
 - i. Daily Service
 - ii. Clean up trash from ground in and around dumpsters.
- 9. WINDOW CLEANING

ATTACHMENT A – SCOPE OF WORK
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JANITORIAL SERVICES

- a. Quarterly (January, April, July and October)
 - i. Clean building interior and exterior windows on each building located on campus.

10. CARPET CLEANING

- a. Quarterly
 - i. Contractor shall clean all carpet in the manner specified (soil extraction, rotary spin bonnet or other method developed by the industry) consistent with carpet manufacturer recommendations.
 - ii. Any residue from carpet cleaning that gets on walls and baseboards will be completely cleaned by Contractor.
 - iii. All carpet cleaning shall be done after normal working hours and be scheduled by Omnitrans Facility Manager.

D. MONTCLAIR TRANSPORTATION CENTER

1. RESTROOMS

- a. Twice Daily Service (Once during normal business hours and once after normal business hours)
 - i. Clean and sanitize toilet, urinal, sink fixtures and hardware with approved cleaner.
 - ii. Clean mirrors, shelves, benches, and sink counters with a non-abrasive cleaner.
 - iii. Sweep and wet mop floor with approved cleaning agent.
 - iv. Replenish toilet paper, toilet seat covers, paper hand towels, waterless hand cleaner, urinal screen deodorant, and sanitary napkins as necessary.
 - v. Empty and clean trash containers and replace plastic liners as necessary.
- b. Weekly Service
 - i. Clean dirt and lint from ceiling and wall vents as required.

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JANITORIAL SERVICES

- ii. Clean walls, partitions, doors and door hardware with approved cleaner.
- c. Monthly Service
 - i. Replace wall mounted deodorant spray cans as required.
 - ii. Clean all ceramic tile surfaces with approved cleaner.
 - iii. Clean ceiling light fixtures, wall-mounted lighting fixtures and covers as required.

Attachment B
REGULATORY REQUIREMENT
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REGULATORY REQUIREMENTS

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

RR-01

ADMINISTRATIVE CODE *

A. Applicability

This Article applies to all contracts.

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

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

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

C. Campaign Contributions

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

RR-02

DISCRIMINATION *

A. Applicability

This Article applies to all contracts.

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

RR-03

WHISTLEBLOWER REQUIREMENTS *

A. Applicability

This Article applies to all contracts.

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

RR-04

PUBLIC RECORDS ACT *

A. Applicability

This Article applies to all contracts.

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

indemnify and hold Omnitrans harmless from all costs and expenses including attorney's fees in connection with any such action.

RR-05

ACCESS TO RECORDS *

A. Applicability

This Article applies to all federally funded contracts.

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

RR-06

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

A. Applicability

This Article applies to all federally funded contracts.

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

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

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

RR-07

ENERGY CONSERVATION REQUIREMENTS

A. Applicability

This Article applies to all federally funded contracts.

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

RR-08

CIVIL RIGHTS REQUIREMENTS *

A. Applicability

This Article applies to all federally funded contracts.

- B. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. §

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

C. Equal Employment Opportunity

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

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

This Article applies to all federally funded contracts.

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

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

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

This Article applies to all federally funded contracts.

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

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

RR-11

SUSPENSION AND DEBARMENT*

A. Applicability

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

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

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

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

RR-12

RECYCLED PRODUCTS

A. Applicability

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

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

Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

RR-13

CLEAN WATER AND CLEAN AIR REQUIREMENTS*

A. Applicability

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

B. CLEAN WATER REQUIREMENTS

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

C. CLEAN AIR

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

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

RR-14

COMPLIANCE WITH FEDERAL LOBBYING POLICY *

A. Applicability

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

- B. The Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, requires that Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying," attached hereto as the certification entitled, "Certification of Compliance with Federal Lobbying Requirements." As set forth in the certifications, each tier of subcontractors shall certify to the tier above that it will

not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures shall be forwarded from tier to tier up to Omnitrans.

RR-15

BUY AMERICA *

A. Applicability

The following Article applies to federally funded rolling stock purchase and construction contracts over \$150,000 and to contracts over \$150,000 for materials & supplies for steel, iron, or manufactured products.

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

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

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

RR-16

CARGO PREFERENCE*

A. Applicability

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

B. USE OF UNITED STATES FLAG VESSELS

Contractor shall use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.

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

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

**RR-17
FLY AMERICA**

A. Applicability

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

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

**RR-18
CONTRACT WORK HOURS AND SAFETY STANDARDS ACT ***

A. Applicability

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

B. Pursuant to the Labor Standards Provisions Applicable to Non-construction Contracts subject to the Federal Contract Work Hours and Safety Standards Act, 40 U.S.C.A. § 327 through 332 as implemented by U.S. Department of Labor regulations, 29 CFR 5.5 (b) and (c) Contractor and Subcontractor's contracting for any part of the Contract work shall comply with the following:

1. **Overtime requirements** – Neither Contractor nor any Subcontractor contracting for any part of the Contract work that requires or involves the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages** – In the event of any violation of the Article set forth in paragraph (1) of this Article Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages. In addition, Contractor and Subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this Article, in the sum of ten dollars (\$10) for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this Article.
3. **Withholding for unpaid wages and liquidated damages** – Omnitrans shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by Contractor or Subcontractor under the Contract or any other Federal contract with Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by Contractor, such sums as may be determined to be necessary to satisfy any liabilities of Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this Article.
4. **Subcontracts** – Contractor or Subcontractor shall insert this Article in any Subcontracts and also an Article requiring the Subcontractors to include this Article in any lower tier Subcontracts. Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with this Article.

5. Payrolls and basic records – The records to be maintained hereinabove shall be made available by Contractor or Subcontractor for inspection, copying, or transcription by Omnitrans and U.S. Dept. of Labor. Contractor and Subcontractor shall maintain payrolls and basic records during the course of the work and shall preserve them for a period of three (3) years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid.

RR-19

DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26

Disadvantaged Business Enterprises

- A. This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The agency's overall goal for DBE participation is 3.5%.
- B. Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Contract. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Omnitrans deems appropriate. Each subcontract Contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).
- C. Bidders are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following concurrent with and accompanying sealed bid concurrent with and accompanying an initial proposal prior to award:
 1. The names and addresses of DBE firms that will participate in this contract;
 2. A description of the work each DBE will perform;
 3. The dollar amount of the participation of each DBE firm participating;
 4. Written documentation of the bidder's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
 5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
 6. If the contract goal is not met, evidence of good faith efforts to do so.

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

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

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

RR-20

ADA ACCESS

A. Applicability

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

B. Access Requirements for Persons with Disabilities

Contractor shall comply with:

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

4. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act; and
5. All applicable requirements of the following regulations and any subsequent amendments thereto:
 - (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
 - (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
 - (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
 - (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
 - (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
 - (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
 - (7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
 - (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
 - (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194; and
 - (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609;
 - (11) Any implementing requirements FTA may issue.

RR-21

ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM *

A. Applicability

This Article applies to federally funded contracts for transit operations.

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

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

C. Certificate of Compliance

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

D. Drug and Alcohol Testing Program

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

E. Alcohol and Drug Free Workplace Program

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

RR-22

TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS *

A. Applicability

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

B. General Transit Employee Protective Requirements

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

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

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

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

If FTA has determined that this Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, Contractor shall comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

E. Indemnity

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

**RR-23
BONDING REQUIREMENTS**

Applicability to Contracts

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

- A. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment and may be in any of the following forms: (a) cash; (b) cashier's check payment to Omnitrans; (c) a certified check payable to the city; or (d) a bidder's bond executed by an admitted surety insurer. Such as a bid bond, certifies check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- B. A performance bond on the part of the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- C. A payment bond on the part of the Contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract.

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

Background and Application

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government.” 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i) (5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). ‘Construction,’ for purposes of the Acts, includes “actual construction, alteration and/or repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

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

Clause Language

Davis-Bacon and Copeland Anti-Kickback Acts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) **Withholding** - Omnitrans shall upon its own action or upon written request of an authorized

representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, Omnitrans may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

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

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

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the

contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

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

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

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

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

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

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

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any

worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

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

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

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

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

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PRIVACY ACT - 5 U.S.C. 552

Applicability to Contracts

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

Flow Down

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

Model Clause/Language

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

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

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

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

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

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

Applicability to Contracts

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

Flow Down

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

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

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

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

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

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

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

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

Applicability to Contracts

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

Flow Down

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

Model Clauses/Language

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

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

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

Applicability to Contracts

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

Flow Down

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

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

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

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

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

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

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VETERANS PREFERENCE

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

END OF REGULATORY REQUIREMENTS

ATTACHMENT C – PRICING
MNT18-74
JANITORIAL SERVICES

	DESCRIPTION	UNIT OF MEASURE	QTY	UNIT PRICE	TOTAL*
Base Year 1	East Valley	MONTH	12	\$1,856.62	\$22,279.40
Base Year 1	San Bernardino Transit Center – Bus Side	MONTH	12	\$10,178.38	\$122,140.54
Base Year 1	San Bernardino Transit Center – Metrolink Side	MONTH	12	\$1,184.70	\$14,216.44
Base Year 1	West Valley	MONTH	12	\$8,089.06	\$97,068.75
Base Year 1	Montclair Transportation Center	MONTH	12	\$838.03	\$10,056.30
Base Year 2	East Valley	MONTH	12	\$2,005.45	\$24,065.43
Base Year 2	San Bernardino Transit Center – Bus Side	MONTH	12	\$10,994.36	\$131,932.27
Base Year 2	San Bernardino Transit Center – Metrolink Side	MONTH	12	\$1,279.67	\$15,356.09
Base Year 2	West Valley	MONTH	12	\$8,737.54	\$104,850.54
Base Year 2	Montclair Transportation Center	MONTH	12	\$905.21	\$10,862.48
Base Year 3	East Valley	MONTH	12	\$2,153.28	\$25,839.36
Base Year 3	San Bernardino Transit Center – Bus Side	MONTH	12	\$11,804.79	\$141,657.48
Base Year 3	San Bernardino Transit Center – Metrolink Side	MONTH	12	\$1,374.01	\$16,488.13
Base Year 3	West Valley	MONTH	12	\$9,381.62	\$112,579.39
Base Year 3	Montclair Transportation Center	MONTH	12	\$971.93	\$11,663.19
Option Year 1	East Valley	MONTH	12	\$2,300.19	\$27,602.28
Option Year 1	San Bernardino Transit Center – Bus Side	MONTH	12	\$12,610.13	\$151,321.50
Option Year 1	San Bernardino Transit Center – Metrolink Side	MONTH	12	\$1,374.01	\$16,488.13
Option Year 1	West Valley	MONTH	12	\$9,381.62	\$112,579.39
Option Year 1	Montclair Transportation Center	MONTH	12	\$971.93	\$11,663.19
Option Year 2	East Valley	MONTH	12	\$2,384.87	\$28,618.44
Option Year 2	San Bernardino Transit Center – Bus Side	MONTH	12	\$13,074.43	\$156,893.10

ATTACHMENT C – PRICING
MNT18-74
JANITORIAL SERVICES

	DESCRIPTION	UNIT OF MEASURE	QTY	UNIT PRICE	TOTAL*
Option Year 2	San Bernardino Transit Center – Metrolink Side	MONTH	12	\$1,521.79	\$18,261.46
Option Year 2	West Valley	MONTH	12	\$10,390.63	\$124,687.61
Option Year 2	Montclair Transportation Center	MONTH	12	\$1,076.47	\$12,917.60
	GRAND TOTAL			\$ 1,522,088.30	

*Pricing shall be inclusive of all direct and indirect costs including but not limited to labor, materials, equipment, supplies, etc.

Description	Price
*Fully Burdened Hourly Rates (i.e., charged to Omnitrans) for positions that will be utilized in the performance of this RFP.	Hourly Rate
Position Name: Day Porter	\$ 20.05
Position Name: Day Porter Overtime	\$ 30.55
Position Name: Night Janitorial	\$ 19.50
Position Name: Night Janitorial Overtime	\$ 29.25
Position Name: Floor Work and Carpet Cleaning	\$ 24.00
Position Name: Emergency Service Daytime	\$ 35.00
Position Name: Emergency Nighttime	\$ 42.00

*May be utilized in the event of Contract modification.



Engine Repower Quotation

Date: 4/12/2018
Quote #: 18-01

Customer Information

Company Name OmniTrans
Contact Name Omar Bryant
Address 1700 5th St.
City, State, Zip San Bernardino, CA 92411
Phone 951-377-9120
Fax 909-379-7379
email omar.bryant@omnitrans.org

Equipment Information

Make New Flyer
Model Various
Year Various
Equipment # Various
Engine Make CWI
Model L9N
Engine Year 2018
HP 280
RPM 2200
Torque 900
Est. Project Time (from receipt of PO) 0

Other

Qty	Item Description	Labor Rate	Total Labor	Materials	Total Materials
66	LN9 280HP engine and 3 way catalyst			\$ 61,768.66	\$ 4,076,731.56
66	Extended coverage	\$ 4,600.00	\$ 303,600.00		

Sub Totals Labor \$ 303,600.00 Materials \$ 4,076,731.56

Quotation Prepared by:

Doug Sperry (562) 415-2814
1939 Deere Ave. doug.sperry@cummins.com
Irvine, CA 92606

CA Sales Tax 8.00% \$ 326,138.52
Total Sale \$ 4,706,470.08

Comments:

Grand Total \$ 4,706,470.08

- Pricing is based on customer's original specifications, and scope of work. If the equipment or specifications change, Cummins Inc. reserves the right to adjust pricing accordingly, or rescind this quote entirely.

- Quote is only valid when the customer signs the Cummins Inc. Engine Sales Agreement. Signed Agreement must be received prior to Cummins Inc.'s acceptance of your purchase order.

- For customers performing their own engine design/engineering and installation labor, Cummins Inc. is not responsible for the following:

- Installation component quality, installation practices, workmanship, the customer's application and design engineering decisions, component specification or compatibility, assembly practices, or endurance characteristics
- Acceptability to the end users of subjective characteristics such as equipment performance, vibration and noise levels, and emissions
- Conformance of the equipment to legislated or regulatory requirements regarding such areas as design, safety, noise levels, and emissions
- Engine or equipment application, with regard to transmission or drive system mating, coupling selection, equipment performance and type of service
- Torsional impact of the entire drive-line system or OEM furnished, or third party components mounted to the engine
- The condition or specifications of the customer's existing equipment, systems, and components to be reused, or other parts acquired for the installation

- Cummins Inc. will provide purchaser the equipment detailed in this quotation and general engine installation guidance, to include Cummins' Application Engineering Bulletins (AEB's) (signed non-disclosure agreement required), technical documentation, and wiring diagrams. This guidance, in no way constitutes an approval by Cummins Inc. of the installation, design, application, materials, or workmanship of the said installation.

- This quote only covers the following components: L9N 280HP engine and 3 way catalyst

Additional Comments / Payment Terms on Page 2

Cummins Pacific, LLC
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Web: www.CumminsPacific.com
Facebook.com/CumminsPacific
Twitter.com/CumminsPacific

Service Centers
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Sacramento 916 371 0630
Fresno 559 274 4400
Ventura 800 881 1159
Inland Empire 800 653 4373
San Diego 800 993 4373

Redding 530 244 6898
Bay Area 510 351 6101
Bakersfield 661 325 9404
Los Angeles 866 934 4373
Orange County 800 746 5757
Hawaii 808 682 8110



Date: 4/12/2018
Quote #: 18-01

Company Name OmniTrans

Total Sale Price \$ 4,706,470.08

Additional Comments:

- Application Engineering and/or Installation Review is required for each variation/type/model of equipment and may vary based on job complexity/quantity.
- Freight/Shipping – The cost of shipping engines and catalysts is included in the cost of this quote.
- Please request a separate quote for the assistance of our field service technicians for any services outside the scope of this quotation.
- Cummins base engine warranty only applies to the engine. Any 3rd party (non Cummins branded) components/parts are not covered under the Cummins engine warranty, are subject to the manufacturer's warranty, and may differ from the engine or other component's warranty coverage.
- All engines quoted are certified for sale in California, unless otherwise specified. It is the purchaser's responsibility, and not Cummins Inc.'s, to ensure the engine's emissions comply with any regulations the purchaser may be subject to (EPA/CARB, Ports, local AQMD/APCD, etc.).
- This pricing is valid for 30 days from quote date. All purchase orders must reference this quote (by number). Issuing a purchase order with this quote number or signing this quote, means the customer accepts all of Cummins Inc.'s Terms and Conditions and Cancellation Policy.

Quote accepted by: _____ PO# _____
Signature Title
Print: _____ Date _____

- Delivery of this signed document to Cummins Inc. confirms the customer accepts all the terms and conditions of this document, desires to purchase the items identified herein, and commits to provide payment for services rendered, per our payment terms described below, and in our credit application. COD orders require a minimum downpayment which must be received before engines or parts will be ordered.

Terms and Conditions:

- Credit approval and Terms are subject to Cummins Inc.'s sole discretion. This quote in no way constitutes approval of credit.
- Payment terms are NET 30 Days, subject to Credit Terms contained in our Credit Application and this document. 1.5% per mo. will be charged on past due accounts.
- Unless mutually agreed upon in writing, Cummins Inc., will not accept purchase orders which:
 - a) specify delivery dates that are not subject to manufacturer's leadtimes, b) contain penalty clauses or liquidated damage clauses, c) require Cummins Inc., to indemnify and hold harmless the purchaser, unless the purchaser also agrees to indemnify and hold harmless Cummins Inc., d) require Cummins Inc., to pay any and all legal expenses for the purchaser in the event of a dispute.
- Notwithstanding anything in this agreement or under law, buyer and seller agree that seller's only liability for any breach of this agreement (or any defect in any item of property sold by seller) shall be limited to the replacement of the defective part or replacement of the defective product; and buyer shall have no other right, claim or remedy against seller, including, but not limited to any right to recover consequential damages under any circumstance.
- This quote may be modified and/or rescinded by Cummins Inc. at its sole discretion unless and until accepted on or after the quote date.
- Note: The Terms and Conditions of this quotation govern over any conflict between this quotation and customer's PO or other document, made either prior or subsequent to this quotation. If vehicles/equipment are not made available in a timely manner, Cummins Inc. reserves the right to charge customer for materials purchased, at .5% of Purchase Order value.
- Customers must notify Cummins Inc. in writing if they desire to cancel an order. Any projects, jobs, or orders that are cancelled after Cummins Inc. has acknowledged the customer's PO (accepting the order), will be charged a minimum of 20% of the PO value, up to the full amount. Any cancellation fees or restocking fees incurred from our vendors, as a result of the customer cancelling their order, will be billed to the customer at a 20% gross margin to cover our administrative costs.
- Customer down payments are non-refundable. If the down payment is less than the cancellation costs, the difference will be billed to the customer.
- Any labor performed before the customer notifies Cummins Inc. to cancel the order, will be billed at the agreed upon rate in the original quote. If Cummins Inc. is not able to cancel the engine or parts orders with our vendors, the customer will be responsible for all costs incurred as a result of canceling the order. Cummins Inc. will work to minimize the cost associated with any cancelled orders.
- Customers issuing PO's for the work quoted in this document, agree to allow Cummins Inc. to use Customer's company name, and photos of equipment (taken before, during and after installation) in promotional and marketing materials, solely at the discretion of Cummins Inc..

Additional Comments / Payment Terms on Page 2

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Inland Empire 800 653 4373
San Diego 800 993 4373

Redding 530 244 6898
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Bakersfield 661 325 9404
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Orange County 800 746 5757
Hawaii 808 682 8110