



**BOARD OF DIRECTORS
NOVEMBER 1, 2017
CONTRACTS SUPPLEMENTAL INFORMATION**

- ITEM #E19 FLUID ANALYSIS SERVICES**
- ITEM #F3 ENGINE SPARK PLUGS (C-D)**
- ITEM #F4 ADVERTISING SALES AND SERVICES – TRANSIT
VEHICLES, SHELTERS AND STATIONS**
- ITEM #F5 PREMIUM BUS SHELTERS**



CONTRACT AGREEMENT

between

CONTRACTOR
Tribologik Corporation
1212 172nd Street
Hammond, IN 46324

(hereinafter "CONTRACTOR")

Telephone: (312) 800-2888
Email: nreich@tribologik.com

CONTRACT DOCUMENTS

CONTRACT NO. MNT18-31

Fluid Analysis Services

And

Contract Amount: \$46,020.00

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

Omnitrans Project Manager:

Name: Carolijo Mitcham
Title: Analyst
Telephone: (909) 379-7181
Email: carolijo.mitcham@omnitrans.org

Contract Administrator:

Name: Angelica Jara
Title: Contracts Review Analyst
Telephone: (909) 379-7246
Email: angelica.jara@omnitrans.org



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ATTACHMENT A – SCOPE OF WORK

ATTACHMENT B - PRICING

ATTACHMENT C – WEAPONS POLICY

This Agreement is made and entered into as of this 7 day of November 2017, and between Omnitrans (hereinafter referred to as "OMNITRANS") and Tribologik Corporation (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 November 6, 2020, 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 November 7, 2020 through November 6, 2022, 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 B, and subject to the maximum cumulative payment obligation.

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Forty-Six Thousand and Twenty Dollars (\$46,020.00), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

5. INVOICING AND PAYMENT

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

CONTRACTOR shall submit invoices in duplicate to:

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

Accountspayable@omnitrans.org

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

- Contract number
 - Invoice number
 - Description of delivery
 - Delivery Date
 - Total quantity delivered
 - Information as requested by OMNITRANS
- B. OMNITRANS shall remit payment within thirty (30) calendar days of approval of the invoices by OMNITRANS' Project Manager.

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

C. TITLE

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

6. AUDIT AND INSPECTION OF RECORDS

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

7. NOTIFICATION

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

To OMNITRANS:
Omnitrans
1700 West Fifth Street
San Bernardino, CA 92411
Attn: Angelica Jara
Contracts Review Analyst

To CONTRACTOR:
Tribologik Corporation
1212 172nd Street
Hammond, IN 46324
Attn: Nicholas Reich
VP Sales & Marketing

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: Carolijo Mitcham, Analyst

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

B. Contractor's Key Personnel

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

<u>Name</u>	<u>Role</u>
<u>Nicholas Reich</u>	<u>Main Contact (Technical)</u>
<u>Moussa Zidome</u>	<u>Laboratory Director</u>
<u>Lori Lambert</u>	<u>Client Services/Orders</u>

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

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

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	N/A
<hr/>	<hr/>
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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 RFQ-MNT18-31 and any and all of its Addenda, Appendices, Exhibits and 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

CONTRACTOR
Tribologik Corporation

P. Scott Graham
CEO/General Manager

Marvin Ostin
CEO

Date

Date

Federal Tax I.D. No. 46-0524970

IDP__

ATTACHMENT A – SCOPE OF WORK

MNT18-31

FLUID ANALYSIS SERVICES

I. INTRODUCTION

Contractor shall provide analysis services of engine oil, transmission oil, hydraulic oil, diesel fuel, and coolant sampling from approximately three hundred (300) pieces of equipment, which includes storage tanks, large and midsize buses, and support vehicles.

II. SCOPE OF WORK

A. Testing

Contractor will be required to perform the fluid analysis testing listed below. All tests shall be conducted within industry standards (ASTM) as listed below.

1. Engine Oil Analysis (SAE5W30, 15W40)

Omnitrans currently maintains the following engine fuel types: Gasoline, CNG, LCNG, and Diesel Engines.

Omnitrans estimates the number of samples for this product will be 565-845 annually.

- a) Elemental Analysis
- b) Viscosity at 100 C, (D 445 or D 88)
- c) Fuel Dilution, (FTIR, Fuel Meter or GC)
- d) Glycol, (D 2982 or FTIR)
- e) Fuel Soot, (FTIR, UTIR, Soot Meter)
- f) Oxidation, (FTIR or UTIR)
- g) Elemental Analysis, PPM, to include:
 - (1) Chromium, Copper, Iron, Lead, Tin, Aluminum, Silicon, Boron, Calcium, Magnesium, Molybdenum, Nickel, Phosphorus, Silver, Sodium, Zinc.
- h) In addition to the criteria above:
 - (1) All “New Oil” samples will be tested for TBN, (D2896 or D4739).
 - (2) All multi-viscosity oils will be tested for viscosity index, (D2270).

2. Transmission Oil (15W40, Dextron III, Allison, Voith, ZF, Ford)

Omnitrans estimates that the number of samples for this product will be 380-570 annually.

- a) Elemental Analysis
- b) Viscosity at 100 C, (D 445 or D 88)
- c) Water % Volume, (Splat Test)
- d) Glycol, (D 2982 or FTIR)
- e) Elemental Analysis, PPM, to include:
 - (1) Chromium, Copper, Iron, Lead, Tin, Aluminum, Silicon, Boron, Calcium, Magnesium, Molybdenum, Nickel, Phosphorus, Silver, Sodium, Zinc, Air Compressor Oil.

ATTACHMENT A – SCOPE OF WORK

MNT18-31

FLUID ANALYSIS SERVICES

- (2) Elemental Analysis
- (3) Viscosity at 100 C, (D 445 or D 88)

f) Metals, PPM to include:

- (1) Chromium, Copper, Iron, Lead, Tin, Aluminum, Silicon, Antimony, Barium, Boron, Calcium, Magnesium, Molybdenum, Nickel, Phosphorus, Silver, Sodium, Titanium, Zinc.

3. Hydraulic Oil

Omnitrans estimates that the number of samples for this product will be 0-20 annually.

- a) Viscosity at 100 C, (D 445 or D 88)
- b) Particle Count (ISO 3938 or 4406)
- c) Total Acid Number, (D 664)
- d) Elemental Analysis, PPM, to include:
 - (1) Chromium, Copper, Iron, Lead, Tin, Aluminum, Silicon, Boron, Calcium, Magnesium, Molybdenum, Nickel, Phosphorus, Silver, Sodium, Zinc.

4. Diesel Fuel

Omnitrans estimates that the number of samples for this product will be between 0-20 annually.

Diesel fuel tests will be divided into a minor and major test. All diesel fuel samples will, by default, have a minor test performed unless specifically requested by Omnitrans.

The cost of the minor test will be included in the base costs of all diesel fuel samples.

- a) Fuel Test (Minor):
 - (1) Bacterial Test, Total Organism
 - (2) Water % Volume, (D 1744 or D 796)
 - (3) Sulfur, % (D 4294)
- b) Fuel Test (Major):
 - (1) Minor Fuel Test, plus
 - (2) Cetane Index-Calculated, (D 976)
 - (3) Water and Sediment, (D 1796 or d 2709)
 - (4) Ash, % Mass (D 482)
 - (5) API Gravity (D 287)
 - (6) Copper Strip Corrosion (D 130)
 - (7) Carbon Residue Ramsbottom, (D 524)
 - (8) Distillation (D 86)
 - (9) Flash Point, (D 93 or D 56)

ATTACHMENT A – SCOPE OF WORK
MNT18-31
FLUID ANALYSIS SERVICES

5. Coolant

Omnitrans estimates that the number of samples for this product will be 0-25 annually.

- a) Elemental Analysis
- b) Glycol, %
- c) PH
- d) Total Dissolved Solids
- e) Nitrite PPM
- f) Elemental Analysis, PPM, to include:
 - (1) Boron, Phosphorous, Silicon, Sodium, Iron, Aluminum, Copper, Lead

B. CRITICAL/ABNORMAL TEST RESULTS NOTIFICATION

In the event that the laboratory analysis indicates a potential equipment problem exists, the Contractor shall immediately notify Omnitrans via email within 8 hours of discovery. Contractor shall verify contact with an Omnitrans employee listed on the emergency contact list (Omnitrans will provide Emergency Contact List to the Contractor) and provide the following:

- Identify piece of equipment and/or storage tank
- Recommended corrective action
- Analysis data

C. EQUIPMENT AND QUANTITIES

Omnitrans currently maintains over three hundred pieces of equipment including storage tanks, large and midsize buses, and support vehicles (Exhibit 1).

D. SAMPLE CONTAINER

Contractor shall supply containers to Omnitrans staff for all fluids listed in subsection A Testing. The container shall meet all Federal, State and local shipping requirements. All containers must be equipped with a label. The sample containers must include a cap/probe, which will accommodate sampling via a “Probalyzer” fitting.

E. METHOD OF SHIPPING

Contractor shall guarantee a maximum two-day (48 hour) time-frame between the shipping of samples and testing by the laboratory. Shipping method shall meet all Federal, State and local guidelines.

F. REPORTING

1. Contractor shall import at a minimum, two (2) years of Omnitrans’ existing historical data into their database to provide analysis and reporting capabilities. Omnitrans will provide the data to be imported to the Contractor in an Excel or Access format. Data shall become the property of Omnitrans. The successful Contractor shall maintain the data for the length of

ATTACHMENT A – SCOPE OF WORK
MNT18-31
FLUID ANALYSIS SERVICES

the contract and will cooperate at the end of this Agreement to provide Omnitrans with necessary data in an Excel or Access format.

2. Access and reporting via the internet is Mandatory, any Bidder not capable of meeting this requirement will be considered not responsible.
3. Test Results - Access via the internet to a SSL 128bit webpage by common web browser with dedicated 2D and encrypted password protection.

G. SOFTWARE

1. Contractor shall supply access to analysis software. This software will be used for fleet trend analysis. This software shall be accessible via the internet by multiple users.
2. Include all applicable terms and conditions on software use to Omnitrans.
3. The software system must provide: a stable multi-tasking, multi-user environment able to allow multiple concurrent user access to the data collected. The software must be intuitive and contain on-line help for the end user. Omnitrans requests access for up to five (5) users.
4. Reporting Software: The system must provide a complete set of predefined reports. Omnitrans must have access to a complete set of system summary reports. All reports shall have the capability of on-screen display and/or print options. The predefined reports will be accessible from the standard browser interface.
5. Ad-Hoc Query: The system shall provide the ability to query and export information into Microsoft Excel or other comma separated value. Each individual field may be used as a condition to search for more general or more specific information. The query capacity shall allow any authorized user to take one or two known pieces of information and cross-reference them to find a vehicle number or element, etc. The ability to query on the transaction file directly must also be included.

H. TECHNICAL SUPPORT

1. Contractor shall provide technical support, during normal business hours, for the contract term. Normal business hours are Monday through Friday, 8:00 am to 5:00 pm, Pacific Standard Time. Bid shall include description of technical support, services, and hours of operation for Technical Support Services Desk.
2. Contractor shall supply two (2) copies of documentation manuals (unless manuals are available on-line) and step-by-step written instructions on necessary steps to perform the required functions. Bidder is instructed to include costs related to technical support and manuals in bid.

I. PRICING

Prices listed for testing must be inclusive of costs, including sample containers, freight and/or shipping costs, labor related costs, testing, and technical support.

FLUID ANALYSIS SERVICES

ATTACHMENT C - EQUIPMENT LIST

UNIT	Year	Make	Model	UNIT	Year	Make	Model	UNIT	Year	Make	Model	UNIT	Year	Make	Model
0101	2001	New Flyer	C40LF	0182	2005	New Flyer	C40LF	1241	2011	New Flyer	C40LF	1313	2015	New Flyer	XN-40
0102	2001	New Flyer	C40LF	0183	2005	New Flyer	C40LF	1242	2011	New Flyer	C40LF	1314	2015	New Flyer	XN-40
0103	2001	New Flyer	C40LF	0183	2005	New Flyer	C40LF	1243	2011	New Flyer	C40LF	1315	2015	New Flyer	XN-40
0104	2001	New Flyer	C40LF	0184	2005	New Flyer	C40LF	1244	2011	New Flyer	C40LF	1321	2016	New Flyer	XN-40
0105	2001	New Flyer	C40LF	0185	2005	New Flyer	C40LF	1245	2011	New Flyer	C40LF	1322	2016	New Flyer	XN-40
0106	2001	New Flyer	C40LF	0186	2005	New Flyer	C40LF	1246	2011	New Flyer	C40LF	1323	2016	New Flyer	XN-40
0107	2001	New Flyer	C40LF	0187	2005	New Flyer	C40LF	1247	2011	New Flyer	C40LF	1324	2016	New Flyer	XN-40
0108	2001	New Flyer	C40LF	0188	2005	New Flyer	C40LF	1251	2012	New Flyer	XN-40	1325	2016	New Flyer	XN-40
0109	2001	New Flyer	C40LF	0189	2005	New Flyer	C40LF	1252	2012	New Flyer	XN-40	1326	2016	New Flyer	XN-40
0110	2001	New Flyer	C40LF	0190	2005	New Flyer	C40LF	1253	2012	New Flyer	XN-40	1327	2016	New Flyer	XN-40
0111	2001	New Flyer	C40LF	0191	2005	New Flyer	C40LF	1254	2012	New Flyer	XN-40	1328	2016	New Flyer	XN-40
0112	2001	New Flyer	C40LF	0192	2005	New Flyer	C40LF	1255	2012	New Flyer	XN-40	1329	2016	New Flyer	XN-40
0113	2001	New Flyer	C40LF	0193	2005	New Flyer	C40LF	1256	2012	New Flyer	XN-40	1330	2016	New Flyer	XN-40
0114	2001	New Flyer	C40LF	0194	2005	New Flyer	C40LF	1257	2012	New Flyer	XN-40	1331	2016	New Flyer	XN-40
0115	2001	New Flyer	C40LF	0195	2005	New Flyer	C40LF	1258	2012	New Flyer	XN-40	1332	2016	New Flyer	XN-40
0116	2001	New Flyer	C40LF	0196	2005	New Flyer	C40LF	1259	2012	New Flyer	XN-40	1333	2016	New Flyer	XN-40
0117	2001	New Flyer	C40LF	0197	2005	New Flyer	C40LF	1260	2012	New Flyer	XN-40	6001	2012	New Flyer	XN-60
0118	2001	New Flyer	C40LF	0198	2005	New Flyer	C40LF	1261	2012	New Flyer	XN-40	6002	2012	New Flyer	XN-60
0119	2001	New Flyer	C40LF	1201	2009	New Flyer	C40LF	1262	2012	New Flyer	XN-40	6003	2012	New Flyer	XN-60
0120	2001	New Flyer	C40LF	1202	2009	New Flyer	C40LF	1263	2012	New Flyer	XN-40	6004	2012	New Flyer	XN-60
0121	2001	New Flyer	C40LF	1203	2009	New Flyer	C40LF	1264	2012	New Flyer	XN-40	6005	2012	New Flyer	XN-60
0122	2001	New Flyer	C40LF	1204	2009	New Flyer	C40LF	1265	2012	New Flyer	XN-40	6006	2012	New Flyer	XN-60
0123	2001	New Flyer	C40LF	1205	2009	New Flyer	C40LF	1266	2012	New Flyer	XN-40	6007	2012	New Flyer	XN-60
0124	2001	New Flyer	C40LF	1206	2009	New Flyer	C40LF	1267	2012	New Flyer	XN-40	6008	2012	New Flyer	XN-60
0125	2001	New Flyer	C40LF	1207	2009	New Flyer	C40LF	1268	2012	New Flyer	XN-40	6009	2012	New Flyer	XN-60
0126	2001	New Flyer	C40LF	1208	2009	New Flyer	C40LF	1269	2012	New Flyer	XN-40	6010	2012	New Flyer	XN-60
0127	2001	New Flyer	C40LF	1209	2009	New Flyer	C40LF	1270	2012	New Flyer	XN-40	6011	2012	New Flyer	XN-60
0151	2003	New Flyer	C40LF	1210	2009	New Flyer	C40LF	1281	2014	New Flyer	XN-40	6012	2012	New Flyer	XN-60
0152	2003	New Flyer	C40LF	1211	2009	New Flyer	C40LF	1282	2014	New Flyer	XN-40	6013	2012	New Flyer	XN-60
0153	2003	New Flyer	C40LF	1212	2009	New Flyer	C40LF	1283	2014	New Flyer	XN-40	6014	2012	New Flyer	XN-60
0154	2003	New Flyer	C40LF	1213	2009	New Flyer	C40LF	1284	2014	New Flyer	XN-40				
0155	2003	New Flyer	C40LF	1214	2009	New Flyer	C40LF	1285	2014	New Flyer	XN-40	EVAG1	Tank	ATF	
0156	2003	New Flyer	C40LF	1215	2009	New Flyer	C40LF	1286	2014	New Flyer	XN-40	EVAG2	Tank	Engine Oil	
0157	2003	New Flyer	C40LF	1216	2009	New Flyer	C40LF	1287	2014	New Flyer	XN-40	EVAG3	Tank	Engine Oil	
0158	2003	New Flyer	C40LF	1217	2009	New Flyer	C40LF	1288	2014	New Flyer	XN-40	EVAG4	Tank	Coolant	
0159	2003	New Flyer	C40LF	1218	2009	New Flyer	C40LF	1289	2014	New Flyer	XN-40	EVUST1	Tank	Diesel	
0160	2003	New Flyer	C40LF	1219	2009	New Flyer	C40LF	1290	2014	New Flyer	XN-40	EVUST2	Tank	Diesel	
0161	2003	New Flyer	C40LF	1220	2009	New Flyer	C40LF	1291	2014	New Flyer	XN-40	EVUST3	Tank	Diesel	
0162	2003	New Flyer	C40LF	1221	2009	New Flyer	C40LF	1292	2014	New Flyer	XN-40	EVUST5	Tank	Engine Oil	
0163	2003	New Flyer	C40LF	1222	2009	New Flyer	C40LF	1293	2014	New Flyer	XN-40	EVUST6	Tank	Coolant	
0164	2003	New Flyer	C40LF	1223	2009	New Flyer	C40LF	1294	2014	New Flyer	XN-40	EVUST7	Tank	ATF	
0165	2003	New Flyer	C40LF	1224	2009	New Flyer	C40LF	1295	2014	New Flyer	XN-40	EVUST8	Tank	Diesel	
0166	2003	New Flyer	C40LF	1225	2009	New Flyer	C40LF	1296	2014	New Flyer	XN-40	FEV400227	Tank	Diesel	
0167	2003	New Flyer	C40LF	1226	2009	New Flyer	C40LF	1301	2015	New Flyer	XN-40	WVAG1	Tank	Coolant	
0168	2003	New Flyer	C40LF	1227	2009	New Flyer	C40LF	1302	2015	New Flyer	XN-40	WVUST4	Tank	Engine Oil	
0169	2003	New Flyer	C40LF	1231	2011	New Flyer	C40LF	1303	2015	New Flyer	XN-40	WVUST5	Tank	ATF	
0170	2003	New Flyer	C40LF	1232	2011	New Flyer	C40LF	1304	2015	New Flyer	XN-40	WVUST6	Tank	Engine Oil	
0171	2003	New Flyer	C40LF	1233	2011	New Flyer	C40LF	1305	2015	New Flyer	XN-40	WVUST7	Tank	Coolant	
0172	2003	New Flyer	C40LF	1234	2011	New Flyer	C40LF	1306	2015	New Flyer	XN-40	WVUST10	Tank	ATF	
0175	2005	New Flyer	C40LF	1235	2011	New Flyer	C40LF	1307	2015	New Flyer	XN-40	WVUST13	Tank	Diesel	
0176	2005	New Flyer	C40LF	1236	2011	New Flyer	C40LF	1308	2015	New Flyer	XN-40	FWV600227	Tank	Diesel	
0177	2005	New Flyer	C40LF	1237	2011	New Flyer	C40LF	1309	2015	New Flyer	XN-40	ISUST1	Tank	Unleaded	
0178	2005	New Flyer	C40LF	1238	2011	New Flyer	C40LF	1310	2015	New Flyer	XN-40	ISUST2	Tank	Unleaded	
0180	2005	New Flyer	C40LF	1239	2011	New Flyer	C40LF	1311	2015	New Flyer	XN-40				
0181	2005	New Flyer	C40LF	1240	2011	New Flyer	C40LF	1312	2015	New Flyer	XN-40				

ATTACHMENT B - PRICING
MNT18-31
FLUID ANALYSIS SERVICES

Item Num	Description	Unit of Measure	Qty	Tribologik Corporation	
				Unit Price	Total
Base Year 1 - Price shall be inclusive of all charges including sample containers, freight and shipping, labor, and testing					
1	Engine Oil Analysis	EA	845	\$9.00	\$7,605.00
2	Transmission Oil Analysis	EA	570	\$9.00	\$5,130.00
3	Hydraulic Oil Analysis	EA	20	\$9.00	\$180.00
4	Diesel Fuel - Minor Test	EA	20	\$25.00	\$500.00
5	Diesel Fuel - Major Test	EA	20	\$85.00	\$1,700.00
6	Coolant	EA	25	\$9.00	\$225.00
Base Year 1					\$15,340.00
Base Year 2 - Price shall be inclusive of all charges including sample containers, freight and shipping, labor, and testing					
1	Engine Oil Analysis	EA	845	\$9.00	\$7,605.00
2	Transmission Oil Analysis	EA	570	\$9.00	\$5,130.00
3	Hydraulic Oil Analysis	EA	20	\$9.00	\$180.00
4	Diesel Fuel - Minor Test	EA	20	\$25.00	\$500.00
5	Diesel Fuel - Major Test	EA	20	\$85.00	\$1,700.00
6	Coolant	EA	25	\$9.00	\$225.00
Base Year 2					\$15,340.00
Base Year 3 - Price shall be inclusive of all charges including sample containers, freight and shipping, labor, and testing					
1	Engine Oil Analysis	EA	845	\$9.00	\$7,605.00
2	Transmission Oil Analysis	EA	570	\$9.00	\$5,130.00
3	Hydraulic Oil Analysis	EA	20	\$9.00	\$180.00
4	Diesel Fuel - Minor Test	EA	20	\$25.00	\$500.00
5	Diesel Fuel - Major Test	EA	20	\$85.00	\$1,700.00
6	Coolant	EA	25	\$9.00	\$225.00
Base Year 3					\$15,340.00
Option Year 1 - Price shall be inclusive of all charges including sample containers, freight and shipping, labor, and testing					
1	Engine Oil Analysis	EA	845	\$9.00	\$7,605.00
2	Transmission Oil Analysis	EA	570	\$9.00	\$5,130.00
3	Hydraulic Oil Analysis	EA	20	\$9.00	\$180.00
4	Diesel Fuel - Minor Test	EA	20	\$25.00	\$500.00
5	Diesl Fuel - Major Test	EA	20	\$85.00	\$1,700.00
6	Coolant Analysis	EA	25	\$9.00	\$225.00
Option Year 1					\$15,340.00
Option Year 2 - Price shall be inclusive of all charges including sample containers, freight and shipping, labor, and testing					
1	Engine Oil Analysis	EA	845	\$9.00	\$7,605.00
2	Transmission Oil Analysis	EA	570	\$9.00	\$5,130.00
3	Hydraulic Oil Analysis	EA	20	\$9.00	\$180.00
4	Diesel Fuel - Minor Test	EA	20	\$25.00	\$500.00
5	Diesel Fuel - Major Test	EA	20	\$85.00	\$1,700.00
6	Coolant Analysis	EA	25	\$9.00	\$225.00
Option Year 2					\$15,340.00
Base Years 1-3					\$46,020.00
Option Year 1					\$15,340.00
Option Year 2					\$15,340.00
TOTAL					\$76,700.00



PERSONNEL POLICY MANUAL

POLICY 707 PAGE 1 OF 6

SUBJECT
PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS
BOARD OF DIRECTORS

DATE: June 7, 2017

I. Purpose

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

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

II. Scope

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

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

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

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

III. Procedure

A. COMMUNICATION OF POLICY

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

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



PERSONNEL POLICY MANUAL

POLICY 707 PAGE 2 OF 6

SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS
BOARD OF DIRECTORS

DATE: June 7, 2017

B. PROHIBITED CONDUCT

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

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

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

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

C. SEARCH

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

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

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

D. DISCIPLINE

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



PERSONNEL POLICY MANUAL

POLICY 707 PAGE 3 OF 6

SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS
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up to and including separation of employment.

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

E. REPORT OF VIOLATIONS

1. Employee Violations

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

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

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

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

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

2. Visitor Violations

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



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POLICY 707 PAGE 4 OF 6

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PROHIBITING WEAPONS IN THE WORKPLACE

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

F. FALSE REPORTS

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

G. ROLES AND RESPONSIBILITIES

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

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

H. SAFETY FIRST

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

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

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

I. ANTI-RETALIATION PROVISION

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



PERSONNEL POLICY MANUAL

POLICY 707 PAGE 5 OF 6

SUBJECT
PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS
BOARD OF DIRECTORS

DATE: June 7, 2017

J. DEFINITIONS

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



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SUBJECT
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APPROVED BY OMNITRANS
BOARD OF DIRECTORS

DATE: June 7, 2017

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

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

SIGNS

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



CONTRACT AGREEMENT

between

Cummins Pacific, LLC
1939 Deere Avenue
Irvine, CA 92606

(hereinafter "CONTRACTOR")
Telephone: (949)862-7212
Email: cs137@cummins.com

And

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

CONTRACT DOCUMENTS

CONTRACT NO. MNT18-17C

ENGINE SPARK PLUGS

Contract Amount: \$119,867

Omnitrans Project Manager:

Name: Victoria Chesney
Title: Maintenance Supervisor
Telephone: (909) 379-7184
Email: victoria.chesney@omnitrans.org

Contract Administrator:

Name: Krystal Turner
Title: Contracts 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

ATTACHMENT D – WEAPONS POLICY

This Agreement is made and entered into as of this 16th day of October, 2017, and between Omnitrans (hereinafter referred to as "OMNITRANS") and Cummins Pacific, LLC (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 October 15, 2020, 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 October 16, 2020 through October 15, 2022, 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 One Hundred Nineteen Thousand Eight Hundred Sixty Seven Dollars (\$119,867), 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: Contracts Administrator

To CONTRACTOR:

Cummins Pacific, LLC
1939 Deere Avenue
Irvine, CA 92606
Attn: Christina Jun
Title: General Manager - Parts

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: Victoria Chesney, Maintenance Supervisor.

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

B. Contractor's Key Personnel

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

<u>Name</u>	<u>Role</u>
Christina Jun	General Manager - Parts
_____	_____
_____	_____
_____	_____

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 IFB-MNT18-17 and any and all of its Addenda, Appendices, Exhibits and Attachments; and (3) CONTRACTOR's bid dated October 9, 2017.

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

CUMMINS PACIFIC, LLC

P. Scott Graham
CEO/General Manager

Name:
Title:

Date

Date

Federal Tax I.D. No. 03-0480510

IDP

A handwritten signature in black ink, appearing to be 'lg', written over a horizontal line.

ATTACHMENT A – SCOPE OF WORK
MNT18-17C
ENGINE SPARK PLUG KITS

1. BACKGROUND

Omnitrans maintains a fleet of 185 buses using Cummins 8.3 and 8.9 compressed natural gas (CNG) powered New Flyer buses with Allison C-4, C5, Voith DIWA, Voith .5 DIWA, and ZF Ecomat transmissions.

2. TECHNICAL REQUIREMENTS

- A. Spark plug kit with boot for Natural Gas ISL Engines shall be new, meet or exceed O.E.M. requirements and conform to all applicable industry and safety standards, including but not limited to: Cummins 8.3 & 8.9 CNG powered engines.
- B. Kits shall include the following:
 - Spark Plug
 - Rubber Boot
 - Dielectric Grease
- C. All items shall meet or exceed the following engine and bus manufacturers published standards:
 - Cummins
 - New Flyer
- D. Contractor shall notify Omnitrans if any of the aforementioned standards change, are superseded or when new industry standards are set.
- E. Contractor shall provide Safety Data Sheets (SDS) for all products containing any toxic items that may be harmful to the end user or environment.
- F. Contractor shall maintain adequate inventory to supply Omnitrans for the term of the contract.
- G. Contractor must identify the part number for each item bid in the comments field.
- H. Contractor wishing to quote a Part Number other than those listed on the Line Item under “Model Number” must submit an “Approved Equals” form, through the Q&A phase of the solicitation. Late requests not submitted through the Q&A tab will not be considered and may result in the bid being deemed non-responsive.

3. DELIVERY

- A. Contractor shall package product in such a manner as to prevent damage during shipment, receiving and storage. Contractor shall also ensure that shipped product is not damaged. Any damaged product discovered upon receipt at Free on Board (FOB) destination point will be returned for credit or replacement at no cost to Omnitrans.

- B. Omnitrans will not pay any premium handling charges related to expedited shipping.
- C. Omnitrans shall pay for direct and actual freight charges. Omnitrans reserves the right to request proof of freight charges or validate referenced charges independently.
- D. Contractor shall ship products three (3) working days After Receipt of Order (ARO).
- E. Contractor shall expedite or overnight orders at the request of Omnitrans.
- F. A packing slip with related Purchase Order (P.O.) number shall accompany all deliveries.
- G. Deliveries shall be made to Omnitrans prepaid F.O.B. destination.
- H. Delivery Location:

Omnitrans East Valley
1700 West 5th Street
San Bernardino, CA 92411

4. WARRANTY

- A. The manufacturer shall guarantee all items purchased under this Contract for a minimum of one (1) year from purchase against any defects with full credit given, including shipping charges.
- B. In the event that warranty adjustments for a part failure cannot be resolved by mutual agreement between the Contractor and Omnitrans' Warranty Coordinator.
- C. Contractor shall provide field service support for the correction of warranty failures as required by Omnitrans.
- D. Contractor shall promptly repair, replace and/or pay for all warranty defects including products, labor, and shipping and handling. The Contractor shall also reimburse for any progressive, compensatory and consequential damages or fines due to product failures.
- E. Claims
 - 1) Warranty defects and failures; will be submitted to the Contractor as an Omnitrans warranty claim. The Contractor shall notify Omnitrans of receipt and/or status of the claim.
 - 2) Contractor shall notify Omnitrans in writing the disposition of a warranty claim within 15 days of receipt.
 - 3) Contractor shall resolve all open warranty claims within 60 days after receipt. If the warranty claim is not resolved within the stated timeframe, the Contractor will be

informed of Omnitrans' intent to automatically credit Omnitrans' accounts payable for the Contractor with the amount of the open claim.

- 4) Contractor shall notify Omnitrans' Warranty Coordinator on the disposition of products within five (5) days after Omnitrans' request for a Return Material Authorization (RMA).

F. Reimbursement

- 1) Contractor shall reimburse Omnitrans for cost associated with a warranty repair claim or service request.
- 2) Contractor's product costs shall be based on the most current supplier contract price or the invoiced price for replacement.
- 3) Contractor's labor repair times shall be fair and reasonable and based on current OEM or industry Standard Repair Time (SRT) guidelines or an agreed upon repair time standard.

5. ESTIMATED ANNUAL USAGE

Line Item	Omnitrans Material #	Item Description	Fit, Form, & Function	Est. Annual Usage*
1	40907	8.9/8.3 CNG Powered Engine Spark Plug Kit #4955850	Cummins 8.9 & 8.3 CNG Powered Transit Bus Engine	1200
2	221742	Denso GK3-7 Iridium Spark Plug Kit 8.3/8.9 Cummins Non Warranty	Cummins 8.9 & 8.3 CNG Powered Transit Bus Engine	600

*No guarantee of usage or order quantities

A. Salient Characteristics – Denso GK3-7 Iridium Spark Plug Kit, 6128 #GK3-7, FF-200/E3.271, 6128-8.9 or Approved Equal

- 1) Shell
 - i. Thread size: 14mm
 - ii. Thread pitch: 1.25mm
 - iii. Seat Type: Gasket
 - iv. Resistor: Yes
 - v. Reach: 19mm (3/4")

- vi. Hex Size: 5/8" (16mm)
- vii. Terminal Type: Solid
- viii. Gap: .012" (0.3mm)

2) Center Electrode

- i. Material: Iridium
- ii. Size: 0.7mm

3) Ground Electrode

- i. Material: Platinum

End Scope of Work

Attachment B
REGULATORY REQUIREMENT
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REGULATORY REQUIREMENTS

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

RR-01 ADMINISTRATIVE CODE *

A. Applicability

This Article applies to all contracts.

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

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

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

C. Campaign Contributions

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

RR-02

DISCRIMINATION *

A. Applicability

This Article applies to all contracts.

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

RR-03

WHISTLEBLOWER REQUIREMENTS *

A. Applicability

This Article applies to all contracts.

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

RR-04

PUBLIC RECORDS ACT *

A. Applicability

This Article applies to all contracts.

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

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

RR-05

ACCESS TO RECORDS *

A. Applicability

This Article applies to all federally funded contracts.

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

RR-06

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

A. Applicability

This Article applies to all federally funded contracts.

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

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

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

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

RR-07

ENERGY CONSERVATION REQUIREMENTS

A. Applicability

This Article applies to all federally funded contracts.

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

RR-08

CIVIL RIGHTS REQUIREMENTS *

A. Applicability

This Article applies to all federally funded contracts.

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

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

C. Equal Employment Opportunity

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

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

This Article applies to all federally funded contracts.

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

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

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

This Article applies to all federally funded contracts.

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

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

RR-11

SUSPENSION AND DEBARMENT*

A. Applicability

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

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

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

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

RR-12

RECYCLED PRODUCTS

A. Applicability

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

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

RR-13**CLEAN WATER AND CLEAN AIR REQUIREMENTS*****A. Applicability**

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

B. CLEAN WATER REQUIREMENTS

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

C. CLEAN AIR

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

D. 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 3.3%.
- 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>

TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS *

A. Applicability

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

B. General Transit Employee Protective Requirements

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

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

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

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

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

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

E. Indemnity

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

**RR-23
BONDING REQUIREMENTS**

Applicability to Contracts

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

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

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

Background and Application

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

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

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

Clause Language

Davis-Bacon and Copeland Anti-Kickback Acts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RR-25

PRIVACY ACT - 5 U.S.C. 552

Applicability to Contracts

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

Flow Down

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

Model Clause/Language

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

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

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

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

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

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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.

RR-28

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

Applicability to Contracts

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

Flow Down

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

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

final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to Omnitrans Construction Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of Omnitrans Project Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

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

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

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

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

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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

MNT18-17C

SPARK PLUG KITS

Item Num	Item Code	Item Type	Description	ModelNum	Unit of Measure	*Quantity	**Base Years 1-3
1	40907		8.3/8.9 CNG POWERED ENGINE SPARK PLUG KITS	4955850	EA	1	\$ 30.83

*Omnitrans makes no guarantee of usage with regard to quantity

**Base Years 1 -3 - All subsequent year pricing shall be determined in October of each year using the change (increase or decrease) of Consumer Price Index (CPI).

**Omnitrans****PERSONNEL POLICY MANUAL**

POLICY 707 PAGE 1 OF 6

SUBJECT**PROHIBITING WEAPONS IN THE WORKPLACE****APPROVED BY OMNITRANS
BOARD OF DIRECTORS**

DATE: June 7, 2017

I. Purpose

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

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

II. Scope

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

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

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

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

III. Procedure**A. COMMUNICATION OF POLICY**

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

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

**OmniTrans****PERSONNEL POLICY MANUAL**

POLICY 707 PAGE 2 OF 6

SUBJECT**PROHIBITING WEAPONS IN THE WORKPLACE****APPROVED BY OMNITRANS
BOARD OF DIRECTORS**

DATE: June 7, 2017

B. PROHIBITED CONDUCT

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

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

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

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

C. SEARCH

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

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

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

D. DISCIPLINE

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

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up to and including separation of employment.

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

E. REPORT OF VIOLATIONS**1. Employee Violations**

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

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

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

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

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

2. Visitor Violations

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

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

F. FALSE REPORTS

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

G. ROLES AND RESPONSIBILITIES

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

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

H. SAFETY FIRST

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

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

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

I. ANTI-RETALIATION PROVISION

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

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J. DEFINITIONS

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



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

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

SIGNS

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



CONTRACT AGREEMENT

between

CONTRACTOR

Brenco Operating – Texas, L.P.
620 S. Cascade Avenue Suite 201
Colorado Springs, CO 80903

(hereinafter "CONTRACTOR")

Telephone: (719) 633-4466

Email: sales@brencooperating.com

CONTRACT DOCUMENTS

CONTRACT NO. MNT18-17D

ENGINE SPARK PLUGS

And

Contract Amount: \$34,972.56

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

OmniTrans Project Manager:

Name: Victoria Chesney

Title: Maintenance Supervisor

Telephone: (909) 379-7184

Email: victoria.chesney@omnitrans.org

Contract Administrator:

Name: Krystal Turner

Title: Contracts 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

ATTACHMENT D – WEAPONS POLICY

This Agreement is made and entered into as of this 16th day of October, 2017, and between Omnitrans (hereinafter referred to as "OMNITRANS") and Brenco Operating – Texas, L.P. (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 October 15, 2020, 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 October 16, 2020 through October 15, 2022, 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 Thirty Four Thousand Nine Hundred Seventy Two Dollars and Fifty Six Cents (\$34,972.56), 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:

To CONTRACTOR:

Omnitrans
1700 West Fifth Street
San Bernardino, CA 92411
Attn: Krystal N. Turner
Title: Contracts Administrator

Brenco Operating – Texas L.P.
620 S. Cascade Avenue, Suite 201
Colorado Springs, CO 80903
Attn: Bryce Penney
Title: VP Bbren Mgmt, Inc. Gen Partner

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: Victoria Chesney, Maintenance Supervisor.

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

B. Contractor's Key Personnel

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

<u>Name</u>	<u>Role</u>
Bryce Penney	VP Bbren Mgmt, Inc. Gen. Partner
_____	_____
_____	_____
_____	_____

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 IFB-MNT18-17 and any and all of its Addenda, Appendices, Exhibits and Attachments; and (3) CONTRACTOR's bid dated October 9, 2017.

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

BRENCO-OPERATING – TEXAS, L.P.

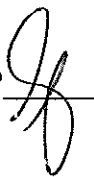
P. Scott Graham
CEO/General Manager

Name:
Title:

Date

Date

Federal Tax I.D. No. 71-0914965

IDP 

ATTACHMENT A – SCOPE OF WORK
MNT18-17D
ENGINE SPARK PLUG KITS

1. BACKGROUND

Omnitrans maintains a fleet of 185 buses using Cummins 8.3 and 8.9 compressed natural gas (CNG) powered New Flyer buses with Allison C-4, C5, Voith DIWA, Voith .5 DIWA, and ZF Ecomat transmissions.

2. TECHNICAL REQUIREMENTS

- A. Spark plug kit with boot for Natural Gas ISL Engines shall be new, meet or exceed O.E.M. requirements and conform to all applicable industry and safety standards, including but not limited to: Cummins 8.3 & 8.9 CNG powered engines.
- B. Kits shall include the following:
 - Spark Plug
 - Rubber Boot
 - Dielectric Grease
- C. All items shall meet or exceed the following engine and bus manufacturers published standards:
 - Cummins
 - New Flyer
- D. Contractor shall notify Omnitrans if any of the aforementioned standards change, are superseded or when new industry standards are set.
- E. Contractor shall provide Safety Data Sheets (SDS) for all products containing any toxic items that may be harmful to the end user or environment.
- F. Contractor shall maintain adequate inventory to supply Omnitrans for the term of the contract.
- G. Contractor must identify the part number for each item bid in the comments field.
- H. Contractor wishing to quote a Part Number other than those listed on the Line Item under “Model Number” must submit an “Approved Equals” form, through the Q&A phase of the solicitation. Late requests not submitted through the Q&A tab will not be considered and may result in the bid being deemed non-responsive.

3. DELIVERY

- A. Contractor shall package product in such a manner as to prevent damage during shipment, receiving and storage. Contractor shall also ensure that shipped product is not damaged. Any damaged product discovered upon receipt at Free on Board (FOB) destination point will be returned for credit or replacement at no cost to Omnitrans.

- B. Omnitrans will not pay any premium handling charges related to expedited shipping.
- C. Omnitrans shall pay for direct and actual freight charges. Omnitrans reserves the right to request proof of freight charges or validate referenced charges independently.
- D. Contractor shall ship products three (3) working days After Receipt of Order (ARO).
- E. Contractor shall expedite or overnight orders at the request of Omnitrans.
- F. A packing slip with related Purchase Order (P.O.) number shall accompany all deliveries.
- G. Deliveries shall be made to Omnitrans prepaid F.O.B. destination.
- H. Delivery Location:

Omnitrans East Valley
1700 West 5th Street
San Bernardino, CA 92411

4. WARRANTY

- A. The manufacturer shall guarantee all items purchased under this Contract for a minimum of one (1) year from purchase against any defects with full credit given, including shipping charges.
- B. In the event that warranty adjustments for a part failure cannot be resolved by mutual agreement between the Contractor and Omnitrans' Warranty Coordinator.
- C. Contractor shall provide field service support for the correction of warranty failures as required by Omnitrans.
- D. Contractor shall promptly repair, replace and/or pay for all warranty defects including products, labor, and shipping and handling. The Contractor shall also reimburse for any progressive, compensatory and consequential damages or fines due to product failures.
- E. Claims
 - 1) Warranty defects and failures; will be submitted to the Contractor as an Omnitrans warranty claim. The Contractor shall notify Omnitrans of receipt and/or status of the claim.
 - 2) Contractor shall notify Omnitrans in writing the disposition of a warranty claim within 15 days of receipt.
 - 3) Contractor shall resolve all open warranty claims within 60 days after receipt. If the warranty claim is not resolved within the stated timeframe, the Contractor will be

informed of Omnitrans' intent to automatically credit Omnitrans' accounts payable for the Contractor with the amount of the open claim.

- 4) Contractor shall notify Omnitrans' Warranty Coordinator on the disposition of products within five (5) days after Omnitrans' request for a Return Material Authorization (RMA).

F. Reimbursement

- 1) Contractor shall reimburse Omnitrans for cost associated with a warranty repair claim or service request.
- 2) Contractor's product costs shall be based on the most current supplier contract price or the invoiced price for replacement.
- 3) Contractor's labor repair times shall be fair and reasonable and based on current OEM or industry Standard Repair Time (SRT) guidelines or an agreed upon repair time standard.

5. ESTIMATED ANNUAL USAGE

Line Item	Omnitrans Material #	Item Description	Fit, Form, & Function	Est. Annual Usage*
1	40907	8.9/8.3 CNG Powered Engine Spark Plug Kit #4955850	Cummins 8.9 & 8.3 CNG Powered Transit Bus Engine	1200
2	221742	Denso GK3-7 Iridium Spark Plug Kit 8.3/8.9 Cummins Non Warranty	Cummins 8.9 & 8.3 CNG Powered Transit Bus Engine	600

*No guarantee of usage or order quantities

A. Salient Characteristics – Denso GK3-7 Iridium Spark Plug Kit, 6128 #GK3-7, FF-200/E3.271, 6128-8.9 or Approved Equal

- 1) Shell
 - i. Thread size: 14mm
 - ii. Thread pitch: 1.25mm
 - iii. Seat Type: Gasket
 - iv. Resistor: Yes
 - v. Reach: 19mm (3/4")

- vi. Hex Size: 5/8" (16mm)
- vii. Terminal Type: Solid
- viii. Gap: .012" (0.3mm)

2) Center Electrode

- i. Material: Iridium
- ii. Size: 0.7mm

3) Ground Electrode

- i. Material: Platinum

End Scope of Work

Attachment B
REGULATORY REQUIREMENT
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REGULATORY REQUIREMENTS

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

RR-01

ADMINISTRATIVE CODE *

A. Applicability

This Article applies to all contracts.

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

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

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

C. Campaign Contributions

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

RR-02

DISCRIMINATION *

A. Applicability

This Article applies to all contracts.

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

RR-03

WHISTLEBLOWER REQUIREMENTS *

A. Applicability

This Article applies to all contracts.

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

RR-04

PUBLIC RECORDS ACT *

A. Applicability

This Article applies to all contracts.

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

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

RR-05

ACCESS TO RECORDS *

A. Applicability

This Article applies to all federally funded contracts.

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

RR-06

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

A. Applicability

This Article applies to all federally funded contracts.

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

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

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

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

RR-07

ENERGY CONSERVATION REQUIREMENTS

A. Applicability

This Article applies to all federally funded contracts.

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

RR-08

CIVIL RIGHTS REQUIREMENTS *

A. Applicability

This Article applies to all federally funded contracts.

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

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

C. Equal Employment Opportunity

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

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

This Article applies to all federally funded contracts.

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

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

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

This Article applies to all federally funded contracts.

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

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

RR-11

SUSPENSION AND DEBARMENT*

A. **Applicability**

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

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

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

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

RR-12

RECYCLED PRODUCTS

A. **Applicability**

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

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

RR-13**CLEAN WATER AND CLEAN AIR REQUIREMENTS*****A. Applicability**

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

B. CLEAN WATER REQUIREMENTS

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

C. CLEAN AIR

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

D. 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 loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to 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 3.3%.
- 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.

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>

TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS *

A. Applicability

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

B. General Transit Employee Protective Requirements

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

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

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

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

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

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

E. Indemnity

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

RR-23

BONDING REQUIREMENTS

Applicability to Contracts

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

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

RR-24

DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

Background and Application

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

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

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

Clause Language

Davis-Bacon and Copeland Anti-Kickback Acts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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PRIVACY ACT - 5 U.S.C. 552

Applicability to Contracts

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

Flow Down

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

Model Clause/Language

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

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

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

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

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

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

Applicability to Contracts

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

Flow Down

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

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

notice of termination will state the time period in which cure is permitted and other appropriate conditions

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

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

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

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

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

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

Applicability to Contracts

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

Flow Down

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

Model Clauses/Language

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

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

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

Applicability to Contracts

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

Flow Down

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

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

final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to Omnitrans Construction Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of Omnitrans Project Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

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

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

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

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

RR-29

VETERANS PREFERENCE

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

END OF REGULATORY REQUIREMENTS

ATTACHMENT C - PRICING
MNT18-17D
SPARK PLUG KITS

Item Num	Item Code	Item Type	Description	ModelNum	Unit of Measure	*Quantity	**Base Years 1-3
1	221742		SPARK PLUG KITS 8.3/8.9 CUMMINS NON WARRANTY	GK3-7, 6128 GK3-7, FF-200/E3.271, 6128-8.9	EA	1	\$ 17.99

*Omnitrans makes no guarantee of usage with regard to quantity

**Base Years 1 -3 - All subsequent year pricing shall be determined in October of each year using the change (increase or decrease) of Consumer Price Index (CPI).



PERSONNEL POLICY MANUAL

POLICY 707 PAGE 1 OF 6

SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS
BOARD OF DIRECTORS

DATE: June 7, 2017

I. Purpose

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

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

II. Scope

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

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

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

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

III. Procedure

A. COMMUNICATION OF POLICY

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

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

**Omnitrans****PERSONNEL POLICY MANUAL**

POLICY 707 PAGE 2 OF 6

SUBJECT**PROHIBITING WEAPONS IN THE WORKPLACE****APPROVED BY OMNITRANS
BOARD OF DIRECTORS**

DATE: June 7, 2017

B. PROHIBITED CONDUCT

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

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

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

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

C. SEARCH

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

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

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

D. DISCIPLINE

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

**OmniTrans****PERSONNEL POLICY MANUAL**

POLICY 707 PAGE 3 OF 6

SUBJECT**PROHIBITING WEAPONS IN THE WORKPLACE****APPROVED BY OMNITRANS
BOARD OF DIRECTORS**

DATE: June 7, 2017

up to and including separation of employment.

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

E. REPORT OF VIOLATIONS**1. Employee Violations**

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

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

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

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

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

2. Visitor Violations

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



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APPROVED BY OMNITRANS
BOARD OF DIRECTORS

DATE: June 7, 2017

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

F. FALSE REPORTS

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

G. ROLES AND RESPONSIBILITIES

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

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

H. SAFETY FIRST

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

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

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

I. ANTI-RETALIATION PROVISION

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



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J. DEFINITIONS

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



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

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

SIGNS

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



CONTRACT AGREEMENT

between

CONTRACTOR
Lamar Transit, LLC
2770 Main Street, Suite 226
Frisco, TX 75034

(hereinafter "CONTRACTOR")
Telephone: 810-879-1476
Email: csextn@lamar.com

And

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

CONTRACT DOCUMENTS

CONTRACT NO. MKP18-02

ADVERTISING SALES AND
SERVICES - TRANSIT VEHICLES,
SHELTERS AND STATIONS

Omnitrans Project Manager:
Name: Wendy Williams
Title: Director of Marketing / Planning
Telephone: (909) 379-7151
Email:
wendy.williams@omnitrans.org

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



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ATTACHMENT A – SCOPE OF WORK

ATTACHMENT B – REGULATORY REQUIREMENTS

ATTACHMENT C – PROHIBITING WEAPONS IN THE WORKPLACE POLICY 707

This Agreement is made and entered into as of this 1st day of January, 2018, and between Omnitrans (hereinafter referred to as "OMNITRANS") and Lamar Transit, LLC (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 December 31, 2022, 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 January 1, 2023 through December 31, 2027, which period encompasses the Initial Term and Option Year One, Option Year Two, Option Year Three, Option Year Four and Option Year Five.

3. CONTRACT OPTIONS

- A. By mutual agreement of both parties, 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' intent to exercise 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

- A. For CONTRACTOR's full and complete performance of its obligations under this Agreement, CONTRACTOR shall pay OMNITRANS on a Percentage Revenue Share with a Firm Fixed Minimum Annual Guarantee basis as stated herein.

BASE YEARS

	Year 1 – 2018	Year 2 – 2019	Year 3 - 2020	Year 4 - 2021	Year 5 - 2022
Minimum Annual Guarantee	\$520,000	\$530,000	\$540,000	\$550,000	\$560,000
Revenue Share Percentage	52.5%	52.5%	52.5%	52.5%	52.5%
Production Credit	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
Media Trade	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000

OPTION YEARS

	Year 1 – 2023	Year 2 – 2024	Year 3 - 2025	Year 4 - 2026	Year 5 - 2027
Minimum Annual Guarantee	\$565,000	\$570,000	\$575,000	\$580,000	\$585,000
Revenue Share Percentage	52.5%	52.5%	52.5%	52.5%	52.5%
Production Credit	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
Media Trade	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000

- B. Prepayment each contract year prior to commencement. Pre-payment for contract Year One will be made within 30 days following contract execution. Annual payment for each subsequent period to be made within 30 days of the new Year's commencement.
- C. Revenue share overage to be calculated on an annual basis, reported monthly by Lamar via detailed reports showing sales and year-to-date revenue share estimates. Lamar will make applicable annual overage payments within 25 days of the end of each contract year.
- D. Production Reserve credit is redeemable annually by Omnitrans for production. Credit is for transit advertising produced by Lamar only and cannot be carried over or combined with any other year's credit.
- E. Annual media trade utilizing local Lamar assets and/or other local media trade. Credit cannot be carried over or combined with any other year's credit.

5. AUDIT AND INSPECTION OF RECORDS

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

6. NOTIFICATION

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

To OMNITRANS:

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

To CONTRACTOR:

Lamar Transit, LLC
2770 Main Street, Suite 226
Frisco, TX 75033
Attn: Casey Sexton

7. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES

A. OMNITRANS' Project Manager

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

Project Manager: Wendy Williams, Director of Marketing / Planning

- 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>
Casey Sexton, V.P. & U.S. Territory Mgr.	Contract Negotiator
Brad Staten, V.P., General Manager	Project Manager
Syd Church, Market Manager	Transit Advertising Sales
Nancy Bluhm, Sales Assistant	Transit Advertising Sales

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

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

8. DISPUTE RESOLUTION

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

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

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

9. TERMINATION FOR CONVENIENCE

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

10. TERMINATION FOR BREACH OF AGREEMENT

- A. If CONTRACTOR fails to perform any of the provisions of this Agreement or so fails to make progress as to endanger timely performance of this Agreement, OMNITRANS may give CONTRACTOR written notice of such default. If CONTRACTOR does not cure such default or provide a plan to cure such default which is acceptable to OMNITRANS within the time permitted by OMNITRANS, then OMNITRANS may terminate this Agreement due to CONTRACTOR's breach of this Agreement.
- B. If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then OMNITRANS may immediately terminate this Agreement.
- C. If CONTRACTOR violates Section 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.

11. ASSIGNMENT

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

12. SUBCONTRACTING

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

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
East Bay Wraps and Sign Company	Installation and removal of bus and train advertising
<hr/>	<hr/>
<hr/>	<hr/>

13. INDEPENDENT CONTRACTOR

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

14. INSURANCE

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) ☒ **Advertising and Personal Injury:** \$2,000,000 per occurrence and aggregate; *Omnitrans named and endorsed as Additional Insured.*
- 3) ☒ **Automobile Liability:** \$1,000,000; per occurrence for bodily and property damage liability and aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- 4) ☐ **Errors and Omissions Liability:** \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$ 3,000,000 aggregate or,
- 5) ☐ **Professional Liability:** \$1,000,000; per occurrence and aggregate.
- 6) ☒ **Workers' Compensation:** statutory limits or,
- 7) ☐ **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.
- 8) ☒ **Employer's Liability:** \$1,000,000; per occurrence.
- 9) ☐ **Environmental Liability:** \$1,000,000; per occurrence and aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- 10) ☐ **Umbrella Policy:** \$4,000,000; per occurrence and aggregate Additional coverage for the above policies, *Omnitrans Additional Insured.*
- 11) ☐ 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.

15. INDEMNITY

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

16. REVISIONS IN SCOPE OF WORK

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

17. RIGHTS IN TECHNICAL DATA

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

18. OWNERSHIP OF REPORTS AND DOCUMENTS

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

19. OWNERSHIP RIGHTS

- A. In the event OMNITRANS rightfully obtains copies of Proprietary Data under the terms of the separate License Agreement and Escrow Agreement that govern rights in Documentation, Software and Intellectual Property created and/or developed by Contractor, its Third Party Software Contractors and its Suppliers as part of the Project, any derivative works and associated documentation created by or on behalf of OMNITRANS by

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

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

20. WORK FOR HIRE

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

21. SUBMITTAL OF CLAIMS BY CONTRACTOR

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

the indebtedness, obligation, injury, loss or damages allegedly incurred by CONTRACTOR.

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

22. EQUAL OPPORTUNITY

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

23. STANDARD OF PERFORMANCE

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

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

To ensure compliance with OMNITRANS' Ethics Policy, CONTRACTOR shall provide written notice to OMNITRANS disclosing the identity of any individual who CONTRACTOR desires to employ or retain under a contract, and who (1)

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

25. DISQUALIFYING POLITICAL CONTRIBUTIONS

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

26. COMPLIANCE WITH LAW

- 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.

27. COMPLIANCE WITH LOBBYING POLICIES

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

OMNITRANS shall have the right to immediately terminate or suspend this Agreement.

28. PUBLIC RECORDS ACT

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

29. WAIVER/INVALIDITY

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

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

30. FORCE MAJEURE

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

31. CONFIDENTIALITY

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

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

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

33. GOVERNING LAW

The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the

State of California, and the proper venue of any action brought hereunder is and shall be the County of San Bernardino, California.

34. MODIFICATIONS TO AGREEMENT

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

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. EXPIRATION OF CONTRACT

- A. At the end of the contract period, existing Contractor must cooperatively participate in the transition of this service to a new Contractor, if necessary. If a transition to a new Contractor occurs, the existing Contractor agrees to make reasonable efforts to maintain service levels

without any degradation to the service. These efforts are to ensure a smooth transition of service and to eliminate any service disruption.

- B. Prior to the transition to a new Contractor, any oversized exterior vehicle ads which are no longer under a revenue agreement at the end of the contract must be removed, and any resulting damage to Omnitrans vehicles must be repaired at the sole expense of the existing Contractor. For any repairs not completed at the end of the contract, Contractor will be invoiced by Omnitrans for actual cost of repair.
- C. In the event that a new Contractor is awarded the contract, a transition of agreements must take place. The existing Contractor will not enter into any new advertising agreements for Omnitrans that expire beyond the base contract expiration date of December 31, 2023, or the applicable option year expiration, if exercised.
 - 1) A status report will be submitted to Omnitrans indicating a list of agreements, number of units involved, and date of expiration for each agreement. The new Contractor will take over all open advertising units at the beginning of the new contract term, and will be notified of each expiring agreement, taking over that advertising space when open.
- D. Contracts with advertisers shall not contain any provisions which prohibit or in any way restrict the assignment of such contracts to a new Contractor at the end of the term of this contract or any earlier termination thereof.

38. 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-MKP18-02 and any and all of its Addenda, Appendices, Exhibits and Attachments; and (3) CONTRACTOR's proposal dated August 21, 2017 and its Appendices, Exhibits, Attachments and Best & Final Offer dated September 11, 2017.

39. ENTIRE AGREEMENT

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

LAMAR TRANSIT, LLC

P. Scott Graham
CEO/General Manager

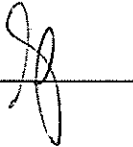
Casey Sexton
Vice President & U.S. Territory Manager

Date

Date

Federal Tax I.D. No. 46-4242858

IDP

_____

ATTACHMENT A – SCOPE OF WORK

MKP18-02

ADVERTISING SALES AND SERVICES TRANSIT VEHICLES, SHELTERS AND STATIONS

1. INTRODUCTION

- A. Contractor shall provide Omnitrans with Advertising Sales and Services Transit Vehicles, Shelters and Stations.
- B. Omnitrans currently operates a fleet of approximately 187 transit buses and 107 paratransit vehicles. Omnitrans owns and maintains approximately 347 bus shelters and 23 bus rapid transit stations, each with 2 advertising panels. Omnitrans also owns and operates the multimodal San Bernardino Transit Center which currently has 4 information kiosks with potential advertising space.
- C. Omnitrans will be the operator of the Arrow passenger rail service which is projected to begin service in 2020 with three 2-compartment rail cars.

2. BACKGROUND

- A. Omnitrans currently has bus shelters with advertising located in the Cities of Colton, Grand Terrace, Fontana, Highland, Loma Linda, Montclair, Ontario, Redlands, Rialto, San Bernardino, Yucaipa and some unincorporated areas of San Bernardino County. Omnitrans bus routes serve the entire San Bernardino Valley. [System Map Link](#). sbX rapid transit stations are located in the Cities of Loma Linda and San Bernardino. [sbX Map Link](#). The Arrow rail service will operate in the Cities of Redlands and San Bernardino. [Arrow Map Link](#).
- B. Omnitrans' fixed-route bus transit operations are conducted from two (2) separate facilities in the San Bernardino Valley:
 - 1) East Valley Facility (San Bernardino)
1700 West Fifth Street, San Bernardino, CA 92411-2499
 - 2) West Valley Facility (Montclair)
4748 Arrow Highway, Montclair, CA 91763-1208
- C. Omnitrans' paratransit operations are conducted from two (2) separate facilities in the San Bernardino Valley:
 - 1) East Valley Facility (San Bernardino)
234 South I Street, San Bernardino, CA 92410
 - 2) West Valley Facility (Rancho Cucamonga)
9421 Feron Blvd., Rancho Cucamonga, CA 91730
- D. Omnitrans' San Bernardino Transit Center is located at 599 W. Rialto Ave., San Bernardino, CA 92410.
- E. Omnitrans' Arrow Rail will be housed at Inland Empire Maintenance Facility (IEMF), 958 West 3rd Street, San Bernardino, CA 92417.
- F. Omnitrans' assets with opportunities for revenue advertising sales and services include, but are not limited to, bus, paratransit and rail vehicles, shelters and stations, and kiosks at the San Bernardino Transit Center.

ADVERTISING SALES AND SERVICES TRANSIT - VEHICLES, SHELTERS AND STATIONS

- G. A listing of Omnitrans known assets available for advertising is provided in Exhibits I and II.
- H. Contractor shall also have the Right of First Offer for new methods of advertising on the Omnitrans system.

3. PROJECT OBJECTIVES

- A. Contractor shall provide an Advertising Sales and Services program for Omnitrans' Transit Vehicles, Shelters and Stations conducted in accordance with Omnitrans' Mission Statement:

“Provide the San Bernardino Valley with comprehensive public mass transportation services which maximize customer use, comfort, safety and satisfaction while efficiently using financial and other resources in an environmentally sensitive manner”.

- B. Contractor shall provide a turnkey transit advertising program.
- C. Produce an aesthetically pleasing Transit Vehicles, Shelters and Stations Advertising Sales and Services program.
- D. Ensure that the community standards regarding control of obscenities are continually met.
- E. To maximize revenue and return on investment (ROI) for the duration of the contract.
- F. Contractor shall manage all aspects of the sales and administration of Omnitrans' Transit Vehicle, Shelter and Stations Advertising program. The Contractor shall solicit, place, administer and manage advertisements on Omnitrans' assets identified herein.
- G. Contractor shall warrant that its employees, agents and sub-contractors assigned to perform services under this contract shall have the proper skill, training and background to perform in a competent, safe and professional manner and that all work will be so performed.
- H. **Revenue**
 - 1) Contractor shall have full control of the acceptance of advertisers, rates and prices to be charged for advertising, and the terms, conditions and manner of payment by advertisers.
 - 1) Contractor shall provide experienced sales staff who are capable of acquiring local and national advertising accounts.
 - 2) Contractor shall be diligent in securing and maximizing sold space on the designated assets.

ADVERTISING SALES AND SERVICES TRANSIT - VEHICLES, SHELTERS AND STATIONS

3) Past Revenue:

<u>Calendar Year</u>	<u>Total</u>
2012	\$620,199
2013	\$477,341
2014	\$534,800
2015	\$659,441
2016	\$588,749

I. Advertisements

- 1) Advertisements shall be of a reputable character, shall conform to recognized business standards and shall not conflict with the laws of the United States, or any state or political subdivision thereof having jurisdiction over Omnitrans or the rules and regulations of any arm, branch or agency of any such governmental bodies.
- 2) Advertisements objectionable to Omnitrans shall, at the request of the Project Manager, be expeditiously removed by the Contractor, or if warranted be immediately removed by Omnitrans, and, after removal by Omnitrans' staff, written notice of removal shall be conveyed to Contractor.
- 3) Contractor shall remove expired or obsolete ads within twenty-one (21) calendar days of expiration or ten (10) calendar days of notification by Omnitrans and at Contractor's sole expense and liability.

4. RESTRICTIONS ON ADVERTISING

A. Contractor shall not display or maintain any advertisement that includes one or more of the following categories:

1. False, Misleading, or Deceptive Commercial Speech. The advertisement proposes a commercial transaction, and the advertisement or information contained in the advertisement is false, misleading, or deceptive.
2. Libelous Speech, Copyright Infringement, etc. The advertisement, or any material contained in it, is libelous or an infringement of copyright, or is otherwise unlawful or illegal or likely to subject Omnitrans to litigation.
3. Unlawful Goods or Services. The advertisement or material contained in it, promotes unlawful or illegal goods, services, or activities.
4. Endorsement. The advertisement or any material contained in it, implies or declares an endorsement by Omnitrans, its Directors, management, or employees of any service, product, or point of view without prior written authorization from Omnitrans.
5. Prurient Interest. The advertisement contains material that describes, depicts, or represents sexual activities, or aspects of the human anatomy in a way that the average adult, applying contemporary community standards, would find appeals to the prurient interest of minors or adults. For purposes of these guidelines, the

ADVERTISING SALES AND SERVICES TRANSIT - VEHICLES, SHELTERS AND STATIONS

term “minor” shall have the meaning contained in California Penal Code Section 313.

6. “Adult” – Oriented Goods or Services. The advertisement promotes or encourages or appears to promote or encourage, a transaction related to, or uses brand names, trademarks, slogans or other materials which are identifiable with, films rated “X” or “NC – 17,” adult book stores, adult video telephone services, adult internet sides, and escort services.
7. Obscenity or Nudity. The advertisement contains obscene materials or images of nudity. For purposes of these Guidelines, the term “obscene matter” shall have the meaning set forth in the California Penal Code Section 311.
8. Unlawful and Detrimental Conduct. The advertisement, or any material contained in it, promotes or encourages, or appears to promote or encourage, unlawful or illegal behavior or activities, and promotes behavior or activities which are detrimental to the maintenance and safe operations of Omnitrans.
9. Demeaning or Disparaging. The advertisement contains images or information that demeans or disparages an individual or group of individuals on account of race, color, religion, national origin, ancestry, gender, age disability or sexual orientation.
10. Violence. The advertisement either (a) contains images or descriptions of graphic violence, including, but not limited to, the depiction of weapons or other implements or devices used in the advertisement in an act or acts of violence or harm on a person or animal; or (b) the advertisement, or any material contained in it, incites or encourages, or appears to incite or encourage violence or violent behavior.
11. Firearms. The advertisement either (a) contains an image of a firearm in the foreground of the main visual, or (b) contains image(s) of firearms that occupy 15% or more of the overall advertisement.
12. Profanity. The advertisement contains words recognized by the community as vulgar indecent or profane for display in a public setting that includes minors.
13. Alcohol/Tobacco. The advertisement promotes the use of alcohol and/or tobacco products.
14. Graffiti. The advertisement contains graphics or language that promotes, resembles, or otherwise encourages graffiti or vandalism.
15. Inappropriate Graphics. The advertisement contains graphics recognized by the community as inappropriate, including, but not limited to, the depiction of human or animal bodies or body parts, or fetuses, in states of mutilation, dismemberment, decomposition, or disfigurement.
16. Political Information. The advertisement contains political information or local or national controversial subject or subjects not in accordance with the statutes, ordinances, and court decisions pertaining to the Omnitrans service area.

ADVERTISING SALES AND SERVICES TRANSIT - VEHICLES, SHELTERS AND STATIONS

17. Religious Information. The advertisement contains direct or indirect reference to religion, or to any religion, or to any deity or deities, or which includes the existence, nonexistence or other characteristics of any deity or deities, or to any religious creed, denomination, belief, tenet, cause or issue relating to (including opposing or questioning) any religion. This prohibition shall include the depiction of text, symbols, or images commonly associated with any religion or with any deity or deities, or any religious creed, denomination, belief, tenet, cause or issue relating to (including opposing or questioning) any religion.

5. STATEMENT OF WORK – BUS EXTERIOR

- A. Contractor's duties and responsibilities shall include, but not be limited to, the following:
- 1) Contractor agrees to solicit advertising in an effort to completely sell all available advertising space authorized by this Agreement.
 - a) Standard Sizes (2) King-size posters and one Tail-size poster per 40-foot bus.
 - b) **Over-sized Ads or Wrapped Buses**
Omnitrans will allow the selling and placing of advertisements covering large exterior portions on particular Omnitrans' buses, also called oversized or wrapped buses. No more than 25% of Omnitrans' non-contracted fixed-route fleet can be sold as fully wrapped buses at any one time.
 - c) Proposed designs for each over-sized, or wrapped bus ads must be submitted to Omnitrans for approval prior to production.
 - d) Advertising shall be installed in such a way as to not detract from Omnitrans logo. Final placement of advertising shall be coordinated with Omnitrans' Director of Marketing & Planning or designee.
 - 2) Omnitrans requires that all such advertising installed as part of the proposal be of the self-adhesive vinyl type, "direct application." The Contractor shall assure that all exterior advertisements are manufactured, installed, and removed in accordance with the current industry standards. Additionally, each advertisement:
 - a) Shall be free from wrinkles, blisters or similar defects;
 - b) Shall be "squared" to the vehicle contour lines; and
 - c) Shall present a sharp and clear appearance. Also, wrap shall not cover front of bus. Omnitrans logo, fare information, California Commercial Vehicle number and other vital information shall be incorporated into the illustration.
 - 3) Contractor shall be responsible for loss or damage to Omnitrans' property which occurs as a direct result of the installation or removal of advertisements by Contractor including, but not limited to, damage to the

ADVERTISING SALES AND SERVICES TRANSIT - VEHICLES, SHELTERS AND STATIONS

paint finish, windows or body resulting from any direct application of an advertisement or advertisements.

- a) If damage occurs upon removal of any advertisement, Contractor shall be responsible for, at no cost to Omnitrans, repainting the bus the original color scheme and replacing any damaged decals or markings, if any.

6. STATEMENT OF WORK – BUS INTERIORS

- A. Interior bus card space is available on vehicles as indicated in Exhibit I. Dimensions are 11 inches high by 17 to 28 inches wide. Card stock used must be of sufficient strength to prevent sagging and falling cards; 18-24 point card stock or similar recommended. No tear off “take ones” attached to bus cards allowed.
- B. Interior vinyl ceiling ads, also known as Michelangelo ads, are allowed with a limit of one per bus.

7. STATEMENT OF WORK – BUS SHELTERS AND SBX AD PANELS

- A. Visibility
 - a) Ensure that Advertisements match the Panel size
 - (1) Standard bus shelter: 48”w x 69” h.
 - (2) sbX ad panel: 44.5” w x 72” h.
 - b) Ensure that the Advertisement quality continually meets or exceeds industry standards for outdoor advertising including without limitation durability, color, clarity, and the like.
- B. Unsold Space

No shelter or station advertising space shall ever be empty. All unsold advertising space requires either a “house” ad from the Contractor, Omnitrans or a Public Service Announcement (PSA). All house ads will be for products or services provided by Omnitrans, Omnitrans, or the Contractor in the service area.
- C. Inspection/Maintenance:

Contractor shall make inspection/maintenance stops at each advertising shelter location no less than one (1) time per 30-day period. This inspection will ensure that the contractor shall correct or report any damaged, sagging ads, graffiti, or any other destruction or obstruction of the advertisement or advertising space that may occur.

8. STATEMENT OF WORK – TRAIN EXTERIORS

- A. Omnitrans requires that all such advertising installed as part of the proposal be of the self-adhesive vinyl type, “direct application.” The Contractor shall assure that all exterior advertisements are manufactured, installed, and removed in accordance with the current industry standards. Additionally, each advertisement:
 - 1) Shall be free from wrinkles, blisters or similar defects;

ADVERTISING SALES AND SERVICES TRANSIT - VEHICLES, SHELTERS AND STATIONS

- 2) Shall be “squared” to the vehicle contour lines; and
- 3) Shall present a sharp and clear appearance. Also, wrap shall not cover front of rail car. Omnitrans logo, fare information, California Commercial Vehicle number and other vital information shall not be obstructed.
- 4) Ad dimensions are negotiable.

9. STATEMENT OF WORK – TRAIN INTERIOR

- A. Interior rail card ad space dimensions are still to be determined.
- B. Interior vinyl ceiling ads, also known as Michelangelo ads, will be allowed with a limit of one per car.

10. STATEMENT OF WORK – PARATRANSIT FLEET EXTERIOR AND INTERIOR

The interior or exterior of para-transit or “OmniGo” shuttle route vehicles, operated on Omnitrans’ behalf by a third party Contractor, may be made available for advertising.

11. ADVERTISING SERVICES

- A. All advertisements shall be furnished, installed, changed and removed at the sole expense of the Contractor, except those that may be removed by Omnitrans for the purpose of repairing its vehicles or amenities or removing advertisements deemed objectionable by Omnitrans.
- B. Contractor shall not be responsible to Omnitrans for the failure or default of any person, firm or corporation to whom space shall have been sold as herein set forth.
- C. Contractor shall take all steps, including the prosecution of necessary legal action, reasonable or proper to obtain payment and collection of all monies due and unpaid for advertising sold by Contractor.
- D. Contractor shall remove expired or obsolete ads within twenty-one (21) days of expiration or ten (10) days of notification. Omnitrans may, at its discretion, provide Contractor with reasonable notice for removal of expired ads.
- E. Contractor shall be responsible for application and final removal of all advertisements.
- F. Contractor shall have full control of the acceptance of advertisers, rates and prices to be charged for advertising, and the terms, conditions and manner of payment by advertisers.
- G. Reporting: Send written monthly reports to the Omnitrans’ representative by the 15th of each month to document activity for the previous month that summarizes all advertisements that have appeared on Omnitrans’ assets at specific time intervals established by Omnitrans’ Project Manager.
 - 1) The report shall include the following for each advertisement:
 - a) Advertiser’s name

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- b) Name of advertisement
- c) Number of units
- d) Type of advertisement
- e) Posting and billing dates and
- f) Gross revenue.
- 2) Any deviations from normal contract procedures, such as, but not limited to, “bonuses”, shall be noted on this report.
- H. Upon request, Contractor shall furnish to Omnitrans a copy of each contract entered into by Contractor for advertising on all assets during the contract period. The terms and conditions of sales of advertising shall be at the sole discretion of Contractor, subject to the terms and conditions of this contract.
- I. Contractor shall have the right in the exercise of its reasonable judgment, and without compensation, to display public welfare, educational advertisements and such other advertisements as deemed proper for the purpose of avoiding unfilled spaces or locations.

12. GENERAL

- A. Provide experienced sales staff who can acquire local and national advertising accounts.
- B. Ensure that all Personnel who will perform any work are duly licensed and able to perform the work that is within their purview to do so.
- C. Correct any deficiencies noted by Omnitrans.
- D. Omnitrans Use of Space
 - 1) Unsold advertising space shall be made available free of charge to Omnitrans for self-promotion, co-promotion or trade purposes. Such ads shall appear for a minimum of thirty (30) days unless otherwise agreed upon by Omnitrans and vendor.
 - 2) Installation and removal of Omnitrans’ advertisements on its assets shall be completed by Contractor.
 - 3) Omnitrans shall give Contractor 30-days advance notice of self-promotion advertising requests. By mutual consent of Omnitrans and the contractor(s) the 30-day advance notice may be waived.
- E. Reserved Space
 - 1) Bus shelters: Each Agency (participating City or County) will have up to two ad panels in their jurisdiction to use for Public Service Announcements (PSA).
 - 2) sbX stations: Omnitrans will retain 25% of space for self-promotion co-promotion or trade.

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- 3) Bus interiors: Omnitrans will retain 25% of space for self-promotion, co-promotion or trade.
- 4) San Bernardino Transit Center kiosks: Omnitrans will retain 33% of space for self-promotion, co-promotion or trade.
- 5) Rail interiors: Omnitrans will retain 25% of space for self-promotion, co-promotion or trade.

F. Contractor's Assigned Project Manager

Upon award of and for the duration of the contract, the Contractor shall assign a Project Manager at its own expense. The Project Manager shall serve as the primary staff person to undertake, render and oversee all of the services necessary to the successful completion of the contract requirements. The name of the Project Manager and a description of his/her qualifications must be submitted with each bid proposal.

G. Availability of Buses

Buses shall be available from 9:00 p.m. to 4:00 a.m. for changing advertisements. If additional time for installation is required, such as for oversized, wrapped, or ceiling ads, the schedule shall be coordinated with the Omnitrans' Maintenance Department at least 5 business days in advance. The Contractor shall be required to check-in with the Maintenance Shift Supervisor on duty when entering and exiting Omnitrans' property. Contractor personnel must provide and wear their own Personal Protective Equipment including but not limited to safety shoes, reflective vests, safety glasses and hearing protection. Contractor shall not interrupt Omnitrans' operations when installing or removing ads.

H. Availability of Trains

Trains shall be available when out of service at specific times to be determined for changing advertisements. If additional time for installation is required such as for oversized, wrapped, or ceiling ads, the schedule shall be coordinated with the Omnitrans Rail Department at least 5 business days in advance. The Contractor shall be required to check-in with the designated Supervisor on duty when entering and exiting the rail maintenance and storage area. Contractor personnel shall be required to take safety training which shall be provided free of charge by Omnitrans staff or designee. Contractor personnel must provide and wear their own Personal Protective Equipment including but not limited to hard hat, safety shoes, reflective vests, safety glasses and hearing protection. Contractor shall not interrupt Omnitrans' operations when installing or removing ads.

End Scope of Work

Attachment:

Exhibit I – Omnitrans Advertising Asset List

Exhibit II – Amenity Inventory Shelter Locations

EXHIBIT I
OMNITRANS ADVERTISING ASSET LIST

Transit Bus Fleet – Exteriors and Interiors

Year - Make - Model	Total Quantity	Regular Tail Ad (21" x 70")	Mini Tail Ad (16" x 68")	King Ad Curb (30" x 144")	King Ad Street (30" x 144")	Oversize: Super King, full side, super tail, etc.	Interior Bus Card (17" to 28" x 11")	Interior Ceiling Ad (size varies)
2001 -New Flyer -C40LF (SR-674)	20	yes	-	yes	yes	yes	yes	yes
2003 -New Flyer -C40LF (SR-813)	22	yes	-	yes	yes	yes	yes	yes
2005 -New Flyer -C40LF (SR-842)	23	yes	-	yes	yes	yes	yes	yes
2009 -New Flyer -C40LFR (SR-1337)	27	-	-	yes	yes	yes	yes	yes
2011 -New Flyer -C40LFR (SR-1563)	9	-	yes	yes	yes	yes	yes	yes
2011 -New Flyer -C40LFR (SR-1564)	8	-	yes	yes	yes	yes	yes	yes
2012 -New Flyer -XN40 (SR-1677)	20	-	yes	yes	yes	yes	yes	yes
2014 -New Flyer -XN40 (SR-1820)	16	-	yes	yes	yes	yes	yes	yes
2015 - New Flyer - XN40 (SR-1965)	15	-	yes	yes	yes	yes	yes	yes
2016 - New Flyer - XN40 (SR-2029)	13	-	yes	yes	yes	yes	yes	yes
2012 -New Flyer -XN60 (SR-1565)	14	-	-	-	-	-	yes	yes
TOTAL	187	65	81	173	173	173	187	187

Exterior Bus Ad Examples



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Interior Bus Ad Examples



Standard Bus Shelters

TOTAL QTY: 347 shelters each with 2 ad panels in 12 cities. Detailed list provided separately in Exhibit II.
AD SIZE: 48" w x 69" h.



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sbX Station Ad Panel

TOTAL QTY: 46 panels at sbX stations in Loma Linda and San Bernardino

SIZE: 44.5" x 72"

Special Condition/Application: Due to labor required to install ads inside the cases, Omnitrans has used and recommends direct application to the exterior of the glass on the ad panels. Panels are backlit.

sbX Station Ad Panel Examples**SBTC info kiosks**

QTY: 4 kiosks on SBTC site, up to 2 panels per kiosk available for advertising revenue.

SIZE: 27" x 57"



ADVERTISING SALES AND SERVICES TRANSIT - VEHICLES, SHELTERS AND STATIONS

Arrow Rail Cars (Service to begin 2020)

QTY: 3 cars

Make: Stadler US

Interior Dimensions

- Length of passenger compartments = 47'4" (each car has two passenger compartments)
- Width = 9'; Height = 9'

Overall vehicle length 92 passenger units and one power pack= 163'.

AD SIZE: Exterior wrap size varies. Interior ad space TBD.

**Omnitrans Paratransit and Contracted Fixed Route Fleet Examples**

Omnitrans would entertain proposals for advertising on the interior/exterior of its contracted bus fleet, and paratransit fleet which currently utilizes cutaway-style vehicles. 107 total vehicles

**Future considerations and options:**

- Omnitran may offer digital ad panels at shelters in the future.
- Omnitran may offer on board digital displays on vehicles in the future.

End Exhibit I

Amenity Inventory Shelter Locations

#	Location	Corner	Facing	Stop Side	City	Qty	13 FT	17FT	Non AD	Installed	Illumin.
0314	BARTON @ HUNTS LN.	NW	WB	FS	COLTON	1		1		09/14/00	1
0409	BARTON @ MOHAVE DR.	SE	EB	FS	COLTON	1		1		01/16/01	1
0312	BARTON @ WATERMAN	SE	EB	FS	COLTON	1		1		09/14/00	1
0235	La Cadena Dr. @ Valley Drive	NW	SB	NS	COLTON	1	1			03/16/00	1
0599	LACADENA @ L ST	NE	NB	FS	COLTON	1		1		10/08/04	1
0310	LACADENA @ N ST.	NW	SB	NS	COLTON	1		1		08/12/00	1
0224	Mt. Vernon @ Cooley Dr.	NE	NB	FS	COLTON	1	1			05/25/00	1
0233	Mt. Vernon @ Cooley Dr.	SW	SB	FS	COLTON	1		1		04/06/00	1
0426	MT. VERNON @ E ST.	NW	SB	NS	COLTON	1	1			01/19/01	1
0225	Mt. Vernon @ La Cadena Drive	SW	SB	FS	COLTON	1	1			03/16/00	1
0315	MT. VERNON @ OLIVE ST.	NE	NB	FS	COLTON	1		1		08/16/00	1
0487	MT. VERNON @ SANTO ANTONIO	NE	NB	FS	COLTON	1	1			05/31/01	1
0229	Mt. Vernon @ Washington	NE	NB	FS	COLTON	1	1			03/31/00	1
0297	Pepper Ave. @ Blue Dr.	NE	NB	FS	COLTON	1		1		08/19/00	1
0296	Pepper Ave. @ Violet St.	SW	SB	FS	COLTON	1		1		08/19/00	1
0456	SAN BERNARDINO @ WILDROSE	SE	EB	FS	COLTON	1		1		03/03/01	1
0588	VALLEY @ RANCHO	SE	EB	FS	COLTON	1		1		10/29/2003	1
0230	Valley Blvd. @ La Cadena Drive	SE	EB	FS	COLTON	1	1			03/16/00	1
0231	Valley Blvd. @ La Cadena Drive	NW	WB	FS	COLTON	1	1			03/16/00	1
0227	Washington @ Bluff Rd.	SE	EB	FS	COLTON	1	1			03/31/00	1
0295	Washington @ Bluff Rd.	NE	WB	NS	COLTON	1		1		08/16/00	1
0232	Washington @ Meadow Lane	NW	WB	FS	COLTON	1	1			06/01/00	1

Amenity Inventory Shelter Locations

#	Location	Corner	Facing	Stop Side	City	Qty	13 FT	17FT	Non AD	Installed	Illumin.
0313	WASHINGTON @ MOHAVE DR.	SE	WB	FS	COLTON	1		1		09/15/00	1
0355	ARROW @ ALDER	NW	WB	FS	FONTANA	1	1			10/06/00	1
0360	ARROW @ CITRUS	SE	EB	FS	FONTANA	1		1		11/27/00	1
0517	ARROW @ CYPRESS	SE	EB	FS	FONTANA	1		1		08/24/01	1
0354	ARROW @ JUNIPER	NW	WB	FS	FONTANA	1	1			10/06/00	1
0357	ARROW @ PALMETTO	NW	WB	FS	FONTANA	1		1		10/06/00	1
0352	ARROW @ SIERRA	NE	WB	FS	FONTANA	1	1			11/09/00	1
0361	ARROW @ SIERRA	NW	WB	FS	FONTANA	1		1		11/27/00	1
0518	ARROW @ TAMARIND	SE	EB	FS	FONTANA	1		1		08/24/01	1
0664	ARROW @ TAMARIND	NW	WB	FS	FONTANA	1	1			08/12/08	
0613	BASELINE @ ALMERIA	SE	EB	FS	FONTANA	1		1		12/28/04	1
0611	BASELINE @ BEECH	NW	WB	FS	FONTANA	1		1		12/27/04	1
0623	BASELINE @ DEL NORTE ST.	NW	WB	FS	FONTANA	1	1			04/05/05	1
0610	BASELINE @ HEMLOCK	NW	WB	FS	FONTANA	1		1		12/27/04	1
0365	BASELINE @ LAS PALMAS	SW	EB	NS	FONTANA	1		1		11/13/00	1
0366	BASELINE @ LAS PALMAS	NW	WB	FS	FONTANA	1		1		11/13/00	1
0614	BASELINE @ ORLANDO	SE	EB	FS	FONTANA	1		1		12/28/04	1
0624	BASELINE @ S. HERITAGE CIRCLE	SE	EB	FS	FONTANA	1		1		04/05/05	1
0609	BASELINE @ SAN SAVAINÉ	NW	WB	FS	FONTANA	1		1		12/27/04	1
0342	CITRUS @ FOOTHILL	NE	NB	FS	FONTANA	1		1		09/25/00	1
0341	FOOTHILL @ CITRUS	NW	WB	FS	FONTANA	1		1		09/17/00	1
0629	FOOTHILL @ CITRUS	SE	EB	FS	FONTANA	1		1		04/05/05	

Amenity Inventory Shelter Locations

#	Location	Corner	Facing	Stop Side	City	Qty	13 FT	17FT	Non AD	Installed	Illumin.
0344	FOOTHILL @ MANGO	SE	EB	FS	FONTANA	1		1		09/17/00	
0345	FOOTHILL @ MANGO	NE	WB	NS	FONTANA	1		1		09/17/00	
0346	FOOTHILL @ PALMETTO	SE	EB	FS	FONTANA	1		1		09/12/00	
0589	FOOTHILL @ PALMETTO	NW	WB	FS	FONTANA	1		1		3/6/2004	
0615	FOOTHILL @ SIERRA	SE	EB	FS	FONTANA	1		1		02/08/05	
0348	FOOTHILL @ TAMARIND	NW	WB	FS	FONTANA	1		1		09/17/00	
0382	JURUPA @ BEECH	SE	EB	FS	FONTANA	1	1			12/04/00	
0375	JURUPA @ CYPRESS	SE	EB	FS	FONTANA	1	1			11/27/00	
0377	JURUPA @ LIVE OAK AVE.	SE	EB	FS	FONTANA	1	1			11/27/00	
0364	MARYGOLD @ MANGO	NW	WB	FS	FONTANA	1	1			12/04/00	1
0363	MARYGOLD @ SIERRA	SW	EB	NS	FONTANA	1		1		11/13/00	
0358	MERRILL @ SIERRA	NW	WB	FS	FONTANA	1	1			11/09/00	
0380	MULBERRY @ MARLEY	NE	NB	FS	FONTANA	1	1			11/09/00	
0359	RANDALL @ SIERRA	NW	WB	FS	FONTANA	1	1			12/04/00	
0444	SAN BERNARDINO @ CITRUS	SE	EB	FS	FONTANA	1		1		02/07/01	
0445	SAN BERNARDINO @ CITRUS	NW	WB	FS	FONTANA	1		1		02/22/01	
0350	SIERRA @ ARROW	SE	NB	NS	FONTANA	1	1			09/25/00	1
0334	SIERRA @ FONTANA CTR.	SW	SB	FS	FONTANA	1		1		11/09/00	
0330	SIERRA @ HOLLY DR.	SW	SB	FS	FONTANA	1		1		09/25/00	
0331	SIERRA @ HOLLY DR.	NE	NB	FS	FONTANA	1		1		09/25/00	1
0646	SIERRA @ MARYGOLD	NW	SB	NS	FONTANA	1		1		05/05/06	
0351	SIERRA @ MERRILL	SW	SB	FS	FONTANA	1		1		09/21/00	

Amenity Inventory Shelter Locations

#	Location	Corner	Facing	Stop Side	City	Qty	13 FT	17FT	Non AD	Installed	Illumin.
0647	SIERRA @ MERRILL	SE	NB	NS	FONTANA	1		1		05/05/06	1
0328	SIERRA @ RANDALL	SW	SB	FS	FONTANA	1		1		09/25/00	
0329	SIERRA @ RANDALL	NE	NB	FS	FONTANA	1		1		10/06/00	1
0332	SIERRA @ SAN BERNARDINO	NE	NB	FS	FONTANA	1		1		09/21/00	1
0376	SIERRA @ SANTA ANA AVE.	NE	NB	FS	FONTANA	1	1			02/07/01	
0434	SIERRA @ UPLAND	NW	SB	NS	FONTANA	1		1		02/19/01	
0653	SIERRA AVE @ REED ST.	NE	NB	FS	FONTANA	1	1			02/15/07	1
0660	SLOVER @ SIERRA	SE	EB	FS	FONTANA	1		1		08/26/08	
0439	BARTON @ CANAL	NW	WB	FS	Grand Terrace	1		1		03/01/01	1
0440	BARTON @ MT. VERNON	SW	EB	NS	Grand Terrace	1		1		02/21/01	1
0437	BARTON @ PALM	NE	WB	NS	Grand Terrace	1		1		03/02/01	1
0438	BARTON @ PALM	SE	EB	FS	Grand Terrace	1		1		03/01/01	1
0435	BARTON @ PRESTON	NW	WB	FS	Grand Terrace	1		1		03/01/01	1
0436	BARTON @ PRESTON	SE	EB	FS	Grand Terrace	1		1		03/01/01	1
0441	MICHIGAN @ BARTON	SW	SB	FS	Grand Terrace	1		1		02/21/01	1
0626	BASELINE @ BOULDER	NE	WB	NS	HIGHLAND	1		1		04/06/05	
0478	BASELINE @ CENTRAL	NE	WB	NS	HIGHLAND	1		1		07/12/01	1
0485	BASELINE @ CENTRAL	SE	EB	FS	HIGHLAND	1	1			07/11/01	
0479	BASELINE @ CHURCH AVE	NW	WB	FS	HIGHLAND	1		1		07/19/01	
0484	BASELINE @ LILLIAN	SE	EB	FS	HIGHLAND	1	1			07/21/01	
0495	BASELINE @ RODGERS LANE	SW	EB	NS	HIGHLAND	1	1			07/16/01	
0482	BASELINE @ STONEY CREEK	SE	EB	NS	HIGHLAND	1		1		07/19/01	

Amenity Inventory Shelter Locations

#	Location	Corner	Facing	Stop Side	City	Qty	13 FT	17FT	Non AD	Installed	Illumin.
0486	BASELINE @ VICTORIA	SE	EB	FS	HIGHLAND	1	1			07/12/01	
0477	BASELINE @ VINE	NW	WB	FS	HIGHLAND	1	1			07/10/01	
0625	BASELINE @ WEBSTER	SE	EB	FS	HIGHLAND	1		1		04/25/05	
0627	BASELINE @ WEBSTER	NE	WB	NS	HIGHLAND	1		1		04/25/05	
0480	BOULDER @ BEAVER MED. CTR.	SW	SB	FS	HIGHLAND	1		1		07/19/01	
0488	BOULDER @ HIGHLAND	SW	SB	FS	HIGHLAND	1		1		07/12/01	
0481	BOULDER @ HIGHLAND VILL. PLAZA	NE	NB	FS	HIGHLAND	1		1		07/13/01	
0628	CHURCH @ 5TH ST	NE	NB	FS	HIGHLAND	1		1		04/25/05	
0643	HIGHLAND @ VICTORIA	SE	EB	FS	HIGHLAND	1	1			03/27/06	1
0216	Anderson @ Academy	SW	SB	FS	Loma Linda	1		1		02/02/00	1
0213	Anderson @ Court	NE	NB	FS	Loma Linda	1		1		05/20/00	1
0262	ANDERSON @ MOUND ST.	SE	NB	NS	Loma Linda	1	1			11/14/00	1
0642	ANDERSON @ REDLANDS BLVD	SW	SB	FS	Loma Linda	1	1			03/27/06	1
0215	Anderson @ Stewart	SE	NB	NS	Loma Linda	1	1			02/02/00	1
0220	Anderson @ Stewart	SW	SB	FS	Loma Linda	1	1			02/07/00	1
0212	Anderson @ Taylor	NW	SB	NS	Loma Linda	1		1		11/14/00	1
0214	Anderson @ University	SW	SB	FS	Loma Linda	1	1			02/02/00	1
0123	Barton @ Anderson	SE	EB	FS	Loma Linda	1	1			11/17/99	1
0661	BARTON @ ANDERSON	NW	WB	FS	Loma Linda	1	1			04/09/08	1
0218	Barton @ Benton	NE	WB	NS	Loma Linda	1		1		02/07/00	1
0222	Barton @ Benton	SE	EB	FS	Loma Linda	1	1			01/30/00	1
0288	Barton @ Campus	SE	EB	FS	Loma Linda	1		1		08/29/00	1

Amenity Inventory Shelter Locations

#	Location	Corner	Facing	Stop Side	City	Qty	13 FT	17FT	Non AD	Installed	Illumin.
0125	Barton @ Mountain View	NW	WB	FS	Loma Linda	1		1		11/17/99	1
0217	Barton @ VA Hospital Entrance	NW	WB	FS	Loma Linda	1		1		02/02/00	1
0289	Barton Rd. @ Loma Linda Dr.	SE	EB	FS	Loma Linda	1		1		08/29/00	1
0411	BARTON RD. @ NEWPORT AVE	SE	EB	FS	Loma Linda	1	1			01/19/01	1
0124	Mountain View @ Barton	NE	NB	FS	Loma Linda	1		1		11/17/99	1
0654	MOUNTAIN VIEW @ COTTONWOOD	NW	SB	NS	Loma Linda	1	1			04/09/07	
0472	MOUNTAIN VIEW @ VAN LEUVEN	NE	NB	FS	Loma Linda	1	1			06/01/01	1
0648	REDLANDS BLVD @ MOUNTAIN VIEW	NW	WB	FS	Loma Linda	1		1		09/14/06	1
0657	REDLANDS BLVD @ RICHARDSON	NW	WB	FS	Loma Linda	1	1			01/31/08	1
0412	REDLANDS BLVD. @ BRYN MAWR	NW	WB	FS	Loma Linda	1		1		12/20/00	1
0410	UNIVERSITY @ BARTON RD.	NE	EB	FS	Loma Linda	1		1		12/21/01	1
0547	MONTE VISTA @ ARROW	SW	SB	FS	MONTCLAIR	1		1		09/04/02	
0639	PALO VERDE ST. @ CENTRAL AVE.	NW	WB	FS	MONTCLAIR	1	1			01/27/06	1
0544	SAN BERNARDINO @ CENTRAL	NW	WB	FS	MONTCLAIR	1		1		7/25/2002	
0545	SAN BERNARDINO @ MONTE VISTA	SE	EB	FS	MONTCLAIR	1		1		7/25/2002	
0586	FOURTH ST @ FRANKLIN AVE	SE	EB	FS	ONTARIO	1		1		05/05/04	1
0619	4TH STREET @ BARRINGTON AVE	SE	EB	FS	ONTARIO	1	1			03/18/05	1
0632	D ST @ SULTANA	SW	EB	NS	ONTARIO	1		1		07/15/05	1
0574	EUCLID @ HOLT	SE	NB	NS	ONTARIO	1		1		06/10/04	1
0575	EUCLID @ PHILADELPHIA	SW	SB	FS	ONTARIO	1	1			06/10/04	
0576	EUCLID @ PHILADELPHIA	NE	NB	FS	ONTARIO	1	1			06/10/04	1
0587	FOURTH ST @ ONTARIO MILLS DR	SE	EB	FS	ONTARIO	1	1			05/05/04	1

Amenity Inventory Shelter Locations

#	Location	Corner	Facing	Stop Side	City	Qty	13 FT	17FT	Non AD	Installed	Illumin.
0559	HOLT @ ALLYN	NW	WB	FS	ONTARIO	1		1		3/5/2004	1
0560	HOLT @ CAMPUS	NE	WB	NS	ONTARIO	1		1		3/5/2004	1
0564	HOLT @ MOUNTAIN	NE	WB	NS	ONTARIO	1		1		01/06/04	1
0562	HOLT @ SAN ANTONIO	NW	WB	FS	ONTARIO	1		1		02/11/04	1
0563	HOLT @ SAN ANTONIO	SE	EB	FS	ONTARIO	1		1		03/05/04	1
0662	HOLT @ VINEYARD	NW	WB	FS	ONTARIO	1		1		03/28/08	1
0565	I STREET @ MOUNTAIN	NE	NB	FS	ONTARIO	1		1		01/12/04	1
0583	INLAND EMPIRE @ HAVEN	NW	WB	FS	ONTARIO	1	1			04/03/04	1
0582	INLAND EMPIRE @ SHELBY ST	SE	EB	FS	ONTARIO	1	1			04/03/04	1
0579	JURUPA @ MILLIKEN	SE	EB	FS	ONTARIO	1	1			09/18/04	1
0578	JURUPA @ TOYOTA WAY	SE	EB	FS	ONTARIO	1	1			09/18/04	1
0585	MILLIKEN @ FOURTH ST	SW	SB	FS	ONTARIO	1		1		05/05/04	1
0584	MILLIKEN @ OLD INLAND EMPIRE BLVD	SE	NB	NS	ONTARIO	1		1		06/26/04	1
0571	MOUNTAIN @ FIFTH ST	SW	SB	FS	ONTARIO	1	1			01/12/04	1
0566	MOUNTAIN @ FOURTH ST	NE	NB	FS	ONTARIO	1	1			01/06/04	1
0569	MOUNTAIN @ FRANCIS	NE	NB	FS	ONTARIO	1		1		01/06/04	1
0570	MOUNTAIN @ MISSION	SW	SB	FS	ONTARIO	1		1		02/03/04	1
0655	MOUNTAIN @ PHILLIPS	NE	NB	FS	ONTARIO	1		1		07/13/07	1
0631	SULTANA @ D ST	SW	SB	FS	ONTARIO	1		1		11/14/05	1
0556	VINEYARD @ 4TH	NE	NB	FS	ONTARIO	1	1			01/19/04	1
0633	VINEYARD @ 4TH	SW	SB	FS	ONTARIO	1		1		07/15/05	1
0572	VINEYARD @ D ST	SW	SB	FS	ONTARIO	1	1			10/11/04	1

Amenity Inventory Shelter Locations

#	Location	Corner	Facing	Stop Side	City	Qty	13 FT	17FT	Non AD	Installed	Illumin.
0663	VINEYARD @ ONT. CONV. CTR. DR.	SE	NB	NS	ONTARIO	1		1		09/18/08	
0605	ALABAMA @ REDLANDS BLVD	SW	SB	FS	REDLANDS	1		1		01/14/05	1
0595	BROOKSIDE @ BELLEVUE	NE	WB	NS	REDLANDS	1		1		02/08/05	1
0634	BROOKSIDE @ BELLEVUE	SE	EB	FS	REDLANDS	1		1		11/14/05	1
0596	BROOKSIDE @ LAKESIDE	SE	EB	FS	REDLANDS	1	1			12/17/04	1
0592	COLTON AVE. @ TENNESSE	NW	WB	FS	REDLANDS	1		1		10/12/04	1
0593	COLTON AVE. @ TENNESSE	SW	EB	NS	REDLANDS	1		1		10/12/04	1
0651	LUGONIA @ ALABAMA	SE	EB	FS	REDLANDS	1		1		12/01/06	
0606	LUGONIA @ TENNESSEE	SE	SB	FS	REDLANDS	1	1			12/17/04	1
0607	ORANGE ST @ COLTON AVE	NE	NB	FS	REDLANDS	1		1		10/07/04	1
0598	REDLANDS BLVD @ ALABAMA	SW	EB	NS	REDLANDS	1		1		01/15/05	1
0604	REDLANDS BLVD @ ALABAMA	NW	WB	FS	REDLANDS	1		1		10/15/04	1
0603	REDLANDS BLVD @ CENTER	SE	EB	FS	REDLANDS	1		1		10/15/04	1
0601	REDLANDS BLVD @ NEVADA	NW	WB	FS	REDLANDS	1		1		10/15/04	1
0600	REDLANDS BLVD @ NEW JERSEY	SE	EB	FS	REDLANDS	1	1			12/17/04	1
0602	REDLANDS BLVD @ NINTH ST	NE	WB	NS	REDLANDS	1		1		10/07/04	1
0630	REDLANDS BLVD. @ WALMART ENT	NW	WB	FS	REDLANDS	1		1		06/15/05	1
0635	BASELINE @ CEDAR	SE	EB	FS	RIALTO	1		1		01/13/06	1
0466	BASELINE @ GLENWOOD AVE.	SE	EB	FS	RIALTO	1		1		04/07/01	1
0308	Baseline @ Willow Ave.	NW	WB	FS	RIALTO	1	1			07/29/00	1
0322	BASELINE AVE. @ LILAC	SE	EB	FS	RIALTO	1		1		10/17/00	1
0321	BASELINE AVE. @ WILLIOW AVE.	SW	EB	NS	RIALTO	1	1			10/17/00	1

Amenity Inventory Shelter Locations

#	Location	Corner	Facing	Stop Side	City	Qty	13 FT	17FT	Non AD	Installed	Illumin.
0264	Baseline Rd. @ Acacia Ave.	NW	WB	FS	RIALTO	1		1		03/16/00	1
0261	Baseline Rd. @ Eucalyptus Ave.	NW	WB	FS	RIALTO	1		1		03/24/00	1
0265	Baseline Rd. @ Eucalyptus Ave.	SE	EB	FS	RIALTO	1		1		03/24/00	1
0268	Baseline Rd. @ Lilac Ave.	NW	WB	FS	RIALTO	1		1		03/16/00	1
0267	Baseline Rd. @ Pepper Ave.	NW	WB	FS	RIALTO	1		1		03/24/00	1
0255	Baseline Rd. @ Riverside Ave.	NE	WB	NS	RIALTO	1		1		03/16/00	1
0256	Baseline Rd. @ Riverside Ave.	NW	WB	FS	RIALTO	1		1		05/20/00	1
0247	Baseline Rd. @ Sycamore Ave.	NW	WB	NS	RIALTO	1		1		03/16/00	1
0259	Baseline Rd. @ Sycamore Ave.	SW	EB	NS	RIALTO	1		1		03/16/00	1
0369	FOOTHILL @ ACACIA	SE	EB	FS	RIALTO	1		1		11/06/00	1
0370	FOOTHILL @ ACACIA	NW	WB	FS	RIALTO	1		1		10/27/00	1
0618	FOOTHILL @ WILLOW	SE	EB	FS	RIALTO	1		1		10/11/2004	1
0239	Foothill Blvd. @ Cedar Ave.	SE	EB	FS	RIALTO	1		1		07/19/00	1
0260	Foothill Blvd. @ Larch Ave.	SE	EB	NS	RIALTO	1		1		07/19/00	1
0241	Foothill Blvd. @ Lilac Ave.	NW	WB	FS	RIALTO	1	1			06/01/00	1
0530	FOOTHILL BLVD. @ LINDEN AVE.	SW	EB	NS	RIALTO	1		1		01/18/02	1
0238	Foothill Blvd. @ Pepper Ave.	NW	WB	FS	RIALTO	1		1		07/19/00	1
0269	Foothill Blvd. @ Riverside Ave.	SE	EB	FS	RIALTO	1		1		11/14/00	1
0271	Foothill Blvd. @ Spruce Ave.	SW	EB	NS	RIALTO	1	1			06/01/00	1
0237	Foothill Blvd. @ Sycamore Ave.	SE	EB	FS	RIALTO	1		1		06/01/00	1
0240	Foothill Blvd. @ Willow Ave.	NW	WB	FS	RIALTO	1		1		06/01/00	1
0501	MERRILL @ LARCH AVE.	NW	WB	FS	RIALTO	1		1		06/22/01	1

Amenity Inventory Shelter Locations

#	Location	Corner	Facing	Stop Side	City	Qty	13 FT	17FT	Non AD	Installed	Illumin.
0502	MERRILL @ SPRUCE AVE	NW	WB	FS	RIALTO	1		1		06/22/01	1
0306	MERRILL AVE. @ CATUS	NW	WB	FS	RIALTO	1		1		08/15/00	1
0307	MERRILL AVE. @ CEDAR	SE	EB	FS	RIALTO	1	1			08/15/00	1
0303	MERRILL AVE. @ RIVERSIDE AVE	SE	EB	FS	RIALTO	1	1			08/15/00	1
0304	MERRILL AVE. @ RIVERSIDE AVE	NW	WB	FS	RIALTO	1		1		07/29/00	1
0250	Merrill Ave. @ Willow Ave.	SW	EB		RIALTO	1	1			03/16/00	1
0251	Merrill Ave. @ Willow Ave.	NW	WB	FS	RIALTO	1	1			03/16/00	1
0617	RIVERSIDE @ BASELINE	NE	NB	FS	RIALTO	1		1		10/12/2004	1
0616	RIVERSIDE @ FOOTHILL	SW	SB	FS	RIALTO	1		1		10/7/2004	1
0496	RIVERSIDE @ WALNUT	SW	SB	FS	RIALTO	1	1			06/22/01	1
0257	Riverside Ave. @ Baseline Rd.	SW	SB	FS	RIALTO	1		1		03/16/00	1
0253	Riverside Ave. @ Foothill Blvd.	NE	NB	FS	RIALTO	1		1		04/24/00	1
0448	SAN BERNARDINO @ RIVERSIDE	NE	WB	NS	RIALTO	1		1		02/22/01	1
0136	Highland @ "E" St.	NW	WB	FS	SB	1		1		11/17/99	1
0527	16TH ST. @ MEDICAL CENTER	NW	WB	FS	SB	1		1		09/27/01	1
0142	2nd St. @ "G" St.	SE	EB	FS	SB	1		1		01/05/00	1
0533	3RD ST @ TIPPECANOE	SW	EB	NS	SB	1		1		11/20/01	
0408	40TH @ H ST	SE	EB	FS	SB	1	1			01/18/01	1
0145	40th St. @ Sepulveda Ave.	SE	EB	FS	SB	1	1			03/23/00	1
0197	40th St. @ Sierra	NW	WB	FS	SB	1		1		06/14/00	1
0146	40th St. @ Waterman Ave.	NW	WB	FS	SB	1	1			06/15/00	1
0416	5TH ST @ MT. VERNON	NW	WB	FS	SB	1		1		03/02/01	1

Amenity Inventory Shelter Locations

#	Location	Corner	Facing	Stop Side	City	Qty	13 FT	17FT	Non AD	Installed	Illumin.
0490	5TH ST @ TIAJUANA	SW	EB	NS	SB	1		1		09/0801	1
0202	5th St. @ Arrowhead Ave.	SE	EB	FS	SB	1		1		02/07/00	1
0509	5TH ST. @ FLORES	NE	WB	FS	SB	1		1		11/01/01	1
0499	9TH ST @ WATERMAN	SE	EB	FS	SB	1	1			06/23/01	
0535	ARROWHEAD @ 9TH ST	SE	NB	NS	SB	1	1			11/11/01	1
0294	Barton @ Wier Rd.	NW	WB	FS	SB	1		1		09/01/00	1
0424	BASELINE @ CALIFORNIA	SE	EB	FS	SB	1		1		12/28/00	1
0498	BASELINE @ DEL ROSA AVE.	SE	EB	FS	SB	1		1		07/19/01	1
0414	BASELINE @ H ST.	NE	WB	NS	SB	1	1			01/18/01	1
0415	BASELINE @ H ST.	SE	EB	FS	SB	1		1		01/02/01	1
0428	BASELINE @ MEDICAL CTR	SE	EB	FS	SB	1	1			01/25/01	1
0492	BASELINE @ TIPPECANOE	SE	FS	EB	SB	1		1		06/23/01	1
0442	BASELINE @ WATERMAN	NE	WB	NS	SB	1		1		02/22/01	
0148	Baseline St. @ Mt. Vernon Ave.	NW	WB	FS	SB	1	1			12/29/99	1
0275	Del Rosa @ Highland	SE	NB	NS	SB	1	1			07/19/00	1
0276	Del Rosa @ Highland	NW	SB	NS	SB	1		1		06/01/00	1
0277	Del Rosa @ Highland	NE	NB	FS	SB	1		1		06/01/00	1
0133	Del Rosa Ave. @ Date St.	SW	SB	FS	SB	1	1			12/29/99	1
0166	E St @ Mac Kay Dr.	NE	NB	FS	SB	1	1			04/17/00	1
0130	E St. @ 6th St.	SW	SB	FS	SB	1	1			12/30/99	1
0177	E St. @ 6th St.	NE	NB	FS	SB	1	1			02/07/00	1
0135	E St. @ 7th Ave.	NE	NB	FS	SB	1	1			01/14/00	1

Amenity Inventory Shelter Locations

#	Location	Corner	Facing	Stop Side	City	Qty	13 FT	17FT	Non AD	Installed	Illumin.
0129	E St. @ 7th St.	SW	SB	FS	SB	1	1			01/04/00	1
0128	E St. @ 9th Ave.	SW	SB	FS	SB	1	1			01/17/00	1
0413	E ST. @ BASELINE	SW	SB	FS	SB	1		1		01/14/01	1
0418	E ST. @ BASELINE	NE	NB	FS	SB	1		1		12/28/00	1
0169	E St. @ Center Mazda	E	SB	X	SB	1	1			04/24/00	1
0168	E St. @ Century Ave.	SE	NB	NS	SB	1	1			04/24/00	1
0138	E St. @ Highland	SW	SB	FS	SB	1	1			03/16/00	1
0284	E St. @ N. Stadium Serv. Ent.	SW	SB	FS	SB	1		1		05/29/00	1
0191	E St. @ North Mall Way	NW	SB	NS	SB	1	1			04/24/00	1
0134	E St. @ Orange Show Pavillion Ent.	NE	NB	FS	SB	1	1			01/04/00	1
0139	E St. @ Orange Show Rd	SW	SB	FS	SB	1	1			02/07/00	1
0171	E St. @ Orange Show Rd	NE	NB	FS	SB	1		1		02/07/00	1
0189	E St. @ South Mall Way	SW	SB	FS	SB	1	1			01/19/01	1
0326	FOOTHILL BLVD. @ MERIDIAN	SW	EB	NS	SB	1		1		09/15/00	1
0287	Foothill Blvd. @ Pepper Ave.	SE	EB	FS	SB	1		1		09/15/00	1
0521	FOOTHILL BLVD. @ RANCHO	NE	WB	NS	SB	1		1		11/10/01	1
0126	Highland @ "E" St.	SE	EB	FS	SB	1		1		11/17/99	1
0272	Highland @ Boulder	NW	WB	FS	SB	1		1		06/19/00	1
0273	Highland @ Bradford	NW	WB	FS	SB	1	1			06/22/00	1
0420	HIGHLAND @ CEDAR ST.	SE	EB	FS	SB	1		1		12/28/00	1
0274	Highland @ Del Rosa	SE	EB	FS	SB	1		1		06/19/00	1
0421	HIGHLAND @ EUCALYPTUS DR.	NE	WB	NS	SB	1	1			12/19/00	1

Amenity Inventory Shelter Locations

#	Location	Corner	Facing	Stop Side	City	Qty	13 FT	17FT	Non AD	Installed	Illumin.
0405	HIGHLAND @ HARRISON	SE	EB	FS	SB	1		1		01/14/01	1
0504	HIGHLAND @ MONTE VISTA	SE	EB	FS	SB	1		1		07/24/01	1
0278	Highland @ Muscupiabe	SW	EB	NS	SB	1	1			7/24/2000	1
0400	HIGHLAND @ ORANGE	NW	WB	FS	SB	1		1		02/01/01	1
0506	HIGHLAND @ OSBUN RD.	NW	WB	FS	SB	1		1		07/24/01	1
0399	HIGHLAND @ PALM	NW	WB	FS	SB	1	1			12/19/00	1
0638	HIGHLAND @ PATTON STATE HOSP	NW	WB	FS	SB	1		1		12/06/05	1
0462	HIGHLAND @ PEIDMONT DR.	NE	WB	NS	SB	1		1		03/27/01	1
0520	HIGHLAND @ ROCKFORD	NW	WB	FS	SB	1		1		08/16/01	1
0402	HIGHLAND @ STERLING	NW	WB	FS	SB	1		1		12/28/01	1
0645	HIGHLAND @ STERLING	NE	WB	NS	SB	1	1			02/24/06	1
0621	HIGHLAND @ VALENCIA	SE	EB	FS	SB	1		1		01/14/05	1
0193	Highland @ Waterman	SE	EB	FS	SB	1	1			05/20/00	1
0181	Highland Ave. @ "H" St.	NW	WB	FS	SB	1	1			04/24/00	1
0182	Highland Ave. @ "H" St.	SE	EB	FS	SB	1	1			05/25/00	1
0132	Highland Ave. @ Del Rosa Ave.	NW	WB	FS	SB	1	1			12/30/99	1
0151	Highland Ave. @ Muscupiabe Dr.	NW	WB	FS	SB	1	1			01/05/00	1
0316	HOSPITALITY @ CARNEGIE DR.	NW	WB	FS	SB	1	1			09/25/00	1
0659	HOSPITALITY @ TIPPECANOE	NW	WB	FS	SB	1		1		08/10/07	1
0162	Hospitality Ln @ Commercecenter E	NW	WB	FS	SB	1	1			05/05/00	1
0164	Hospitality Ln. @ Hunts Ln.	NW	WB	FS	SB	1	1			05/25/00	1
0165	Hospitality Ln. @ Hunts Ln.	SW	EB	NS	SB	1	1			05/25/00	1

Amenity Inventory Shelter Locations

#	Location	Corner	Facing	Stop Side	City	Qty	13 FT	17FT	Non AD	Installed	Illumin.
0463	KENDALL @ LITTLE MOUNTAIN	NW	WB	FS	SB	1		1		03/24/01	1
0528	KENDALL @ LITTLE MOUNTAIN	SE	EB	FS	SB	1		1		09/28/01	1
0475	KENDALL @ PALM AVE.	SE	EB	FS	SB	1	1			05/09/01	1
0406	KENDALL @ WAGONWHEEL	SE	EB	FS	SB	1	1			01/19/01	1
0286	Kendall Dr. @ 40th St.	NW	WB	FS	SB	1	1			7/24/2000	1
0285	Kendall Dr. @ Shandin Hills Dr.	SE	EB	FS	SB	1	1			7/24/2000	1
0283	Medical Center Dr. @ 17th St.	NE	NB	FS	SB	1		1		07/19/00	1
0131	Mill St. @ "E" St.	NW	WB	FS	SB	1	1			12/30/99	1
0552	MT VERNON @ COLLEGE	SE	NB	NS	SB	1	1				1
0553	MT VERNON @ GRANT	NE	NB	FS	SB	1		1		05/06/04	1
0152	Mt. Vernon Ave. @ Mill St.	SE	NB	NS	SB	1	1			02/07/00	1
0200	NorthPark Blvd. @ University Pkwy.	SE	EB	FS	SB	1	1			05/25/00	1
0468	RIALTO @ LENA	SW	EB	NS	SB	1		1		04/14/01	1
0327	RIALTO @ WATERMAN	NW	WB	FS	SB	1	1			08/14/00	1
0460	SIERRA @ BASELINE	SW	SB	FS	SB	1		1		03/16/01	1
0503	STERLING @ DATE PLACE	SW	SB	FS	SB	1		1		08/05/01	1
0665	TIPPECANOE & BRIER	SW	SB	FS	SB	1		1		10/15/08	1
0622	TIPPECANOE @ HARRIMAN # 1	NW	SB	NS	SB	1	1			12/28/04	1
0644	TIPPECANOE @ HARRIMAN # 2	NW	SB	FS	SB	1		1		03/27/06	1
0450	TIPPECANOE @ HARRY SHEPPARD	SE	NB	FS	SB	1		1		03/21/01	1
0641	TIPPECANOE @ LAURELWOOD	NE	NB	FS	SB	1	1			03/27/06	1
0198	University @ College	SW	SB	FS	SB	1	1			06/14/00	1

Amenity Inventory Shelter Locations

#	Location	Corner	Facing	Stop Side	City	Qty	13 FT	17FT	Non AD	Installed	Illumin.
0199	University Parkway @ College Ave.	NE	NB	FS	SB	1	1			06/13/00	1
0195	University Parkway @ Hallmark Pkwy.	SW	SB	FS	SB	1	1			06/14/00	1
0127	University Parkway @ Kendall	NE	NB	FS	SB	1		1		01/17/00	1
0194	University Parkway @ Varsity St.	SW	SB	FS	SB	1		1		05/05/00	1
0464	UNIVERSITY PKWY. @ STATE ST.	NE	NB	FS	SB	1		1		03/24/01	1
0236	WATERMAN & COMMERCIAL RD.	SW	SB	FS	SB	1		1		04/14/01	1
0538	WATERMAN @ 16TH ST	NW	SB	NS	SB	1		1		11/16/01	1
0318	WATERMAN @ 9TH ST.	SW	SB	FS	SB	1		1		08/21/00	1
0433	WATERMAN @ MILL ST.	SW	SB	FS	SB	1		1		01/25/01	1
0317	WATERMAN @ REDLANDS BLVD.	SW	SB	FS	SB	1		1		09/01/00	1
0404	WATERMAN @ VANDERBILT	NW	SB	NS	SB	1		1		12/28/00	1
0525	WATERMAN @ VANDERBILT WAY	NE	NB	FS	SB	1		1		09/27/01	1
0449	WATERMAN @ WIER	SW	SB	FS	SB	1		1		02/21/01	1
0160	Waterman Ave. @ 9th St.	NE	NB	FS	SB	1	1			03/16/00	
0161	Waterman Ave. @ Baseline St.	NE	NB	FS	SB	1	1			05/20/00	1
0185	Waterman Ave. @ Gilbert	W	SB	X	SB	1	1			03/16/00	1
0209	Waterman Ave. @ Hospitality Lane	NE	NB	FS	SB	1		1		04/14/01	1
0497	BASELINE @ DEL ROSA DR.	NW	WB	FS	SB County	1	1			07/19/01	
0147	Baseline St. @ Tippecanoe Ave.	NW	WB	FS	SB County	1	1			09/01/00	
0371	CENTRAL @ 11TH ST.	SW	SB	FS	SB County	1	1			10/17/00	
0372	CENTRAL @ MISSION BLVD.	NE	NB	FS	SB County	1		1		10/17/00	
0374	CENTRAL @ PHILLIPS	NE	NB	FS	SB County	1		1		11/27/00	

Amenity Inventory Shelter Locations

#	Location	Corner	Facing	Stop Side	City	Qty	13 FT	17FT	Non AD	Installed	Illumin.
0149	Del Rosa Ave. @ Pumalo Street	NW	SB	NS	SB County	1	1			09/14/00	1
0339	FOOTHILL @ CATAWBA	SW	EB	NS	SB County	1		1		09/17/00	
0476	FOOTHILL BLVD. @ MULBERRY	SE	EB	FS	SB County	1		1		09/08/11	1
0390	CALIFORNIA @ AVE. D	SW	SB	FS	YUCAIPA	1		1		01/13/01	1
0389	CALIFORNIA @ AVE. E	NW	SB	NS	YUCAIPA	1	1			03/09/01	1
0573	SAND CANYON @ YUCAIPA BLVD	NE	NB	FS	YUCAIPA	1	1			10/29/03	1
0640	YUCAIPA BLVD @ 11TH	SE	EB	FS	YUCAIPA	1		1		03/24/06	1
0567	YUCAIPA BLVD @ 14TH ST	SE	EB	FS	YUCAIPA	1	1			10/29/03	1
0388	YUCAIPA BLVD @ 2ND ST	NW	WB	FS	YUCAIPA	1		1		01/13/01	1
0658	YUCAIPA BLVD @ 3RD ST	SE	EB	FS	YUCAIPA	1		1		07/19/07	1
0397	YUCAIPA BLVD @ 4TH ST.	SE	EB	FS	YUCAIPA	1	1			02/03/01	1
0637	YUCAIPA BLVD @ 6TH ST	NW	WB	FS	YUCAIPA	1		1		01/13/06	1
0656	YUCAIPA BLVD @ OAK GLEN RD	SE	EB	FS	YUCAIPA	1		1		08/09/07	1
0636	YUCAIPA BLVD @ YUCAIPA VALLEY CTR	NW	WB	FS	YUCAIPA	1	1			12/21/05	1
0387	YUCAIPA BLVD. @ 3RD ST	NW	WB	FS	YUCAIPA	1		1		01/13/01	1
0513	YUCAIPA BLVD. @ 3RD ST.	SW	EB	NS	YUCAIPA	1	1			08/16/01	1
0386	YUCAIPA BLVD. @ 4TH ST	NW	WB	FS	YUCAIPA	1		1		01/13/01	1
						347	132	215	0		291

Attachment B

REGULATORY REQUIREMENT

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REGULATORY REQUIREMENTS

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

RR-01

ADMINISTRATIVE CODE *

A. Applicability

This Article applies to all contracts.

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

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

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

C. Campaign Contributions

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

RR-02
DISCRIMINATION *

A. Applicability

This Article applies to all contracts.

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

RR-03
WHISTLEBLOWER REQUIREMENTS *

A. Applicability

This Article applies to all contracts.

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

RR-04
PUBLIC RECORDS ACT *

A. Applicability

This Article applies to all contracts.

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

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

RR-05

ACCESS TO RECORDS *

A. Applicability

This Article applies to all federally funded contracts.

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

RR-06

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

A. Applicability

This Article applies to all federally funded contracts.

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

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

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

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

RR-07

ENERGY CONSERVATION REQUIREMENTS

A. Applicability

This Article applies to all federally funded contracts.

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

RR-08

CIVIL RIGHTS REQUIREMENTS *

A. Applicability

This Article applies to all federally funded contracts.

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

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

C. Equal Employment Opportunity

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

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

This Article applies to all federally funded contracts.

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

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

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

This Article applies to all federally funded contracts.

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

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

RR-11

SUSPENSION AND DEBARMENT*

A. **Applicability**

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

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

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

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

RR-12

RECYCLED PRODUCTS

A. **Applicability**

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

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

RR-13

CLEAN WATER AND CLEAN AIR REQUIREMENTS*

A. Applicability

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

B. CLEAN WATER REQUIREMENTS

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

C. CLEAN AIR

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

- D. 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 3.3%.
- B. Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Contract. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Omnitrans deems appropriate. Each subcontract Contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).
- C. Bidders are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following concurrent with and accompanying sealed bid concurrent with and accompanying an initial proposal prior to award:
 - 1. The names and addresses of DBE firms that will participate in this contract;
 - 2. A description of the work each DBE will perform;
 - 3. The dollar amount of the participation of each DBE firm participating;
 - 4. Written documentation of the bidder's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
 - 5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
 - 6. If the contract goal is not met, evidence of good faith efforts to do so.

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

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

- D. Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 7 days after the contractor's

receipt of payment for that work from the Omnitrans. In addition, Contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to his contract is satisfactorily completed.

- E. Contractor must promptly notify Omnitrans whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of Omnitrans.

RR-20

ADA ACCESS

A. Applicability

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

B. Access Requirements for Persons with Disabilities

Contractor shall comply with:

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

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

RR-21

ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM *

A. Applicability

This Article applies to federally funded contracts for transit operations.

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

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

C. Certificate of Compliance

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

D. Drug and Alcohol Testing Program

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

E. Alcohol and Drug Free Workplace Program

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

RR-22

TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS *

A. Applicability

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

B. General Transit Employee Protective Requirements

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

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

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

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

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

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

E. Indemnity

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

**RR-23
BONDING REQUIREMENTS**

Applicability to Contracts

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

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

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

Background and Application

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

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

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

Clause Language

Davis-Bacon and Copeland Anti-Kickback Acts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RR-25 PRIVACY ACT - 5 U.S.C. 552

Applicability to Contracts

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

Flow Down

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

Model Clause/Language

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

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

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

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

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

Applicability to Contracts

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

Flow Down

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

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

notice of termination will state the time period in which cure is permitted and other appropriate conditions

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

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

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

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

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

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

Applicability to Contracts

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

Flow Down

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

Model Clauses/Language

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

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

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

Applicability to Contracts

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

Flow Down

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

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

final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to Omnitrans Construction Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of Omnitrans Project Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

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

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

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

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

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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



PERSONNEL POLICY MANUAL

POLICY 707 PAGE 1 OF 6

SUBJECT
PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS
BOARD OF DIRECTORS

DATE: June 7, 2017

I. Purpose

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

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

II. Scope

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

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

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

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

III. Procedure

A. COMMUNICATION OF POLICY

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

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



PERSONNEL POLICY MANUAL

POLICY 707 PAGE 2 OF 6

SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS
BOARD OF DIRECTORS

DATE: June 7, 2017

B. PROHIBITED CONDUCT

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

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

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

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

C. SEARCH

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

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

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

D. DISCIPLINE

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



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up to and including separation of employment.

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

E. REPORT OF VIOLATIONS

1. Employee Violations

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

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

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

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

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

2. Visitor Violations

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



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

F. FALSE REPORTS

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

G. ROLES AND RESPONSIBILITIES

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

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

H. SAFETY FIRST

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

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

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

I. ANTI-RETALIATION PROVISION

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



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POLICY 707 PAGE 5 OF 6

SUBJECT
PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS
BOARD OF DIRECTORS

DATE: June 7, 2017

J. DEFINITIONS

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



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

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

SIGNS

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



CONTRACT AGREEMENT

between

CONTRACTOR
Tolar Manufacturing Company Inc.
258 Mariah Circle
Corona, California 92879-1571

(hereinafter "CONTRACTOR")
Telephone: (951) 808-0081
Email: pmerrick@tolarmfg.com

And

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

CONTRACT DOCUMENTS

CONTRACT NO. MKP18-08

PREMIUM BUS SHELTERS

Contract Amount: \$225,043.92

Omnitrans Project Manager:

Name: Anna Jaiswal
Title: Development Planning Mgr
Telephone: (909) 379-7256
Email: anna.jaiswal@omnitrans.org

Contract Administrator:

Name: Kathy McClure
Title: Sr. Contract Administrator
Telephone: (909) 379-7186
Email: kathy.mcclure@omnitrans.org



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ATTACHMENT A – TECHNICAL SPECIFICATIONS/DRAWINGS

ATTACHMENT B – REGULATORY REQUIREMENTS

ATTACHMENT C – COST/PRICE

ATTACHMENT D – PROHIBITING WEAPONS IN THE WORKPLACE

This Agreement is made and entered into as of this 7th day of November, and between Omnitrans (hereinafter referred to as "OMNITRANS") and Tolar Manufacturing Company 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 October 31, 2020, 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 November 7, 2017 through October 31, 2022, 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 FIRM FIXED UNIT RATE 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 Two Hundred Twenty-Five Thousand, Forty-Three Dollars and Ninety-Two Cents Dollars (\$225,043.92), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

5. INVOICING AND PAYMENT

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

CONTRACTOR shall submit invoices in duplicate to:

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

Accountspayable@omnitrans.org

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

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

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

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

C. TITLE

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

6. AUDIT AND INSPECTION OF RECORDS

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

7. NOTIFICATION

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

To OMNITRANS:

Omnitrans
1700 West Fifth Street
San Bernardino, CA 92411
Attn: Kathy McClure
Sr. Contract Administrator

To CONTRACTOR:

Tolar Manufacturing Company, Inc.
258 Mariah Circle
Corona, CA 92879-1571
Attn: Patrick Merrick
Executive Vice-President

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: Anna Jaiswal, Development Planning 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>
Patrick Merrick	Project Manager
Eli Meza	Engineering Manager
Gabriel Guzman	Production Manager
Kristin Allen	Quality Control 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
Urban Solar Corporation 1880 SW Merlo Drive Beaverton, OR 97003	Solar Illumination/Solar System Engineering

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 Driver's 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 IFB-MKP18-08R and any and all of its Addenda, Appendices, Exhibits and Attachments; and (3) CONTRACTOR's bid dated September 27, 2017 and its Appendices, Exhibits and 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

CONTRACTOR

Company name: Tolar Manufacturing Co., Inc

P. Scott Graham
CEO/General Manager

Name: Patrick Merrick
Title: Executive
Vice-President

Date

September 26, 2017
Date

Federal Tax I.D. No. 33-0534028

IDP
CM____

ATTACHMENT “A”

ATTACHMENT A – SCOPE OF WORK
MKP18-08
PREMIUM BUS SHELTERS

SECTION 13 34 00

TRANSIT SHELTER – WITH MEDIA KIOSK OPTION

PART 1 – GENERAL

1.01 DESCRIPTION

- A. Provide where shown on drawings shelter components as specified, complete and ready for operation. Each item shall be specifically designed for the intended function. Provide necessary accessories, items of equipment, electrical, and structural items, whether specified or not, for a properly owner installed and functional transit shelter.
- B. Equipment shall be suitable for installation in the space allocated on the drawings and operational within the limits of the available energy generated by the shelter's photovoltaic panels. Any modification or redesign of the shelter's structure or equipment power draw because of an alternate equipment selection by the Manufacturer shall be provided by the Manufacturer at no additional cost to Owner, only after approval of Owner.
- C. Where a device or part of the transit shelter is referred to in the singular number, it is intended that such reference shall apply to as many such devices as are required to complete the installation.
- D. Remove, relocate, and repair any items necessary for the proper installation of the transit shelter at no extra cost to Owner.

1.02 REFERENCES

- A. The Aluminum Association – Aluminum Design Manual 2010.
- B. American Welding Society – AWS Standard D1. 1-102 & D1 2-08.
- C. ASCE 7 2010 Minimum Design Loads for Buildings and Other Structures.
- D. ASTM B 209 Specification for Aluminum and Aluminum Alloy - Sheet and Plate.
- E. ASTM B221 Specification for Aluminum and Aluminum Alloy – Extruded Bars, Rods, Wire, Profiles, and Tubes.

- F. Americans with Disabilities Act of 1990 (ADA).
- G. Buy America 49 USC 5323(j)(1) and 49 CFR Part 661.
- H. NASA Atmospheric Science Data Center - Monthly Averaged Insolation (sun-hours) Incident on a Horizontal Surface 22-year Average, and Minimum and Maximum Difference from Monthly Averaged Insolation.
- I. OSHA Nationally Recognized Testing Laboratory Certification.

1.03 SUBMITTALS

- A. Manufacturer's product brochures and specifications.
- B. Manufacturer's shelter design drawings. Include elevations and connection details, as necessary.
- C. Signed and sealed structural engineering design documents performed by a California licensed engineer.
- D. Samples of shelter finish.
- E. Manufacturer's shelter installation instructions.
- F. Manufacturer's warranty documentation.
- G. Buy America Certification.
- H. Quality Assurance Certificate of Compliance.

1.04 DESIGN

- A. Shelters shall be engineered to meet or exceed applicable wind and seismic loads.
- B. Shelters shall be designed and manufactured in full compliance with local building codes.
- C. As designed, shelters shall be compliant with ADA provisions and related Federal guidelines, and shall remain compliant if installed per manufacturer instructions.
- D. Design shall include opportunity for agency branding as shown on the drawings, through choice of color, logo placement, or other means.
- E. All shelter components and equipment shall be designed and fabricated such that they allow easy maintenance of the type and frequency noted

below:

- a) Full wash-down (power wash) of shelter and accessories at least once a month;
 - b) Removal of dirt, graffiti, chewing gum, and pasted material;
 - c) Wipe-down of glass surfaces;
 - d) Touch up of marred paint; and
 - e) Verifying of shelter lighting levels and replacement of LED luminaries.
- F. Shelter components and equipment shall be designed and fabricated to inhibit vandalism and create a safe environment.

1.05 QUALITY ASSURANCE AND QUALITY CONTROL

A. General:

- 1. Articles, materials, fittings, and equipment incorporated in the work shall be new and unused, of recent manufacture, free from defects and imperfections, and shall as far as practicable be the manufacturer's standard make and shall be of first grade industrial quality, suitable for the purpose intended and subject to approval by Owner.
- 2. Components used in the assembly of the system shall be standard, commercially available components and shall be manufactured by companies regularly engaged in the manufacture of the components.
- 3. The design shall provide for the interchangeability of items, such as wall panels, lights, route map, and advertisements.
- 4. Mixing of metric and United States customary units (non-metric) standards on the same equipment is not permitted.
- 5. Products or composite materials containing asbestos or lead shall not be utilized.
- 6. Work shall be performed in a neat and workmanlike manner by workers skilled in their respective trades, and materials and equipment shall be installed as recommended by the manufacturers and in accordance with specified codes and standards.
- 7. For purposes of designating type and quality of work under, the contract documents reference products by manufacturers listed in Part 2 – Products, and serve as the basis of design. This is intended to

clearly communicate the design intent and the characteristics and features required.

8. The language of text for documents shall be English.
9. Dimensions shall be displayed in U.S. customary units.
10. Electrical apparatus shall be UL listed and bear UL label.

B. Qualifications of Manufacturer:

1. Manufacturer shall be a reputable manufacturing firm, regularly engaged in the design and manufacturer of the type of equipment specified.
2. Manufacturer shall demonstrate at least five years' experience designing, manufacturing, and providing product support for transit shelters. Manufacturer may be requested to submit a list of at least two locations where similar shelters are installed and operating. Manufacturer shall be responsible for providing shelters of highest quality and workmanship, which will perform specified functions reliably and safely, and shall permit required maintenance procedures with minimum interference of service or degradation of reliability. In addition, commercial literature or drawings of these models shall be furnished for illustration.
3. Manufacturer shall provide proof of meeting the International Accreditation Services (IAS), International Building Code (IBC), and American Institute of Steel Construction (AISC) quality fabrication standards. This may be accomplished by either direct accreditation by these institutions, or by certification from an accredited third party.
 - a. An example of an accredited third party agency is the Clark County Building Department and Fire Prevention Bureau – and their nationally recognized fabricator program.
 - b. See the following links for more information:
 - i. http://www.iasonline.org/Fabricator_Inspection_Program/.
 - ii. <http://www.clarkcountynv.gov/building/engineering/How%20To%20Guides/tg2.pdf>.

C. Certificates:

1. Furnish an affidavit certifying that all materials and workmanship comply with the applicable code requirements.

2. Before final acceptance, furnish certificates of the authorities having jurisdiction.
- D. Certificates of Compliance: Upon delivery of the equipment, submit certificates of compliance. Each certificate shall be signed by an authorized representative of the manufacturer stating that the equipment complies in all respects with contract requirements.
- E. Warranty: All equipment shall be warranted, from date of acceptance, in accordance with the contract documents and the following provisions:
1. Manufacturer warrants that all materials and equipment furnished hereunder by the Manufacturer or suppliers will be free from defects in design, material, workmanship and operation for one full year from the date of successful completion of testing by the Owner, with the following caveats:
 - a) Limited Lifetime Structural Warranty on shelter and components for the expected lifetime of the product (10 years).
 - b) Powder coat finish warranty from fading or lifting (3 years).
 - c) Solar illumination systems (5 years).
 - d) Manufacturer shall maintain inventory of replacement parts for ten years after delivery of shelter.
 2. Manufacturer shall remedy any such defect at his own expense.
 3. Work that has been abused or neglected by Owner is excluded from this warranty.
 4. Manufacturer shall furnish written warranties required by the respective sections of the specifications for terms required therein. These warranties shall be in writing, on Manufacturer's or supplier's letterhead and shall be included in the operations and maintenance manual(s) as specified in this section.
 5. Major shelter components, specifically those manufactured by other than the primary supplier, shall be covered by their own respective warranties, which shall not be less than the supplier's standard warranty. These warranties shall also be included in the operations and maintenance manual(s).
 6. Nothing in these requirements, conditions, or specifications including Owner's right to a complete inspection shall constitute a disclaimer to

or limit, negate, exclude, or modify in any way any warranty created hereunder.

1.06 BUY AMERICA

- A. As applied to manufactured products, shelters shall be 100% Buy America compliant and certified by manufacturer to meet 49 USC 5323(j)(1) and 49 CFR Part 661 for manufactured components.

1.07 DELIVERABLES

- A. Shelter
- B. Operation and maintenance manuals.
- C. Training program.
- D. Certificates.
- E. Special Tools: Two of each special tool, and instruments if any, required for operation or maintenance, packed in two appropriate steel tool boxes.
- F. Approved spare parts.

1.08 DELIVERY, STORAGE, AND HANDLING

- A. Pre-assemble shelter system to greatest extent possible to minimize field assembly. Disassemble only as necessary for shipping and handling limitations. Clearly mark units for re-assembly and coordinated installation.
- B. Shelter and components shall be suitably packed or crated to prevent damage in transit or during handling. Items shall be carefully stored as required in a manner to avoid misalignment or distortion, and shall be adequately protected against damage by weather, construction, exposure, or other cause.
- C. All materials shall be delivered to the site as designated by Owner with their original manufacturer's markings and identification intact. Owner reserves the right to reject materials that are damaged, improperly identified, or not in conformance with reviewed shop drawings and catalog cuts.

PART 2 – PRODUCTS

2.01 BASIS OF DESIGN

- A. Signature Series, as manufactured by Tolar Manufacturing Company, Inc., or approved equal.

2.02 MATERIALS

- A. All structural aluminum components shall be minimum 6063-T5 alloy, unless otherwise noted.
- B. All aluminum extrusions shall be custom designs.
- C. Components shall be sized to comply with the load requirement for the project and shall not be less than the dimensions shown on specific plans.

2.03 FABRICATION

- A. All holes shall be drilled or punched.
- B. Aluminum welding shall conform to AWS Standard D1. 2-08. Electrodes shall conform to AWS/SFA 5.10 Class ER4043.
- C. All welding shall be done at manufacturing facility. No on-site welding is performed.
- D. All welding must be performed by AWS Certified welders.

2.04 SHELTER SIZES

- A. Standard Overall Size: 17'-0" x 6'-3" (roof perimeter size).
- B. Standard Depths: 2' nominal side wall (bus approach side), 4' nominal Media Kiosk projection (bus departure side).
- C. Standard Lengths: 16' nominal back wall.
- D. Standard Interior Clearance: 8'-0" minimum.
- E. Nominal dimensions measured to center of columns/posts.
- F. Custom dimensions available to meet aesthetic or other design criteria.

2.05 COLUMNS/POSTS

- A. Posts shall be fabricated of all extruded aluminum material.

1. Aluminum shall be 6063-T6 with minimum thickness of 1/8".
- B. Four (4) posts shall support the roof assembly and configured to provide full and half wall width footprint.
- C. In addition to the posts supporting the roof, two (2) additional post shall serve the following purpose:
 1. One (1) post to aid in supporting the side wall panel;
 2. One (1) post to aid in supporting the Media Kiosk.
- D. Posts shall be 4.5" diameter multi-channel aluminum extrusion design.
 1. Channels shall utilize gasketing to seat and capture wall glazing.
 2. Unused channels shall be concealed by matching extruded snap-in material.
- E. Mounting: Surface-mounted utilizing adjustable shoes. Shoes shall be internally telescoping, allowing the posts to slide over the shoes.
 1. Shoes shall be 5/8" aluminum plate, circular in profile, 4" in height, and 9" - 12" in diameter (all uniform).
 2. Shoes shall include four (4) anchor holes to support installation of 1/2" x 8" stainless steel expansion anchors.
 3. Shoes shall be fabricated using 18" x 2" x 1/4" aluminum tube to provide a minimum of 12" height adjustment for anchoring and leveling the shelter on a suitable concrete pad.
 4. Posts shall come with a pre-drilled hole in the base of each post as a guide to field-drill a corresponding hole in the shoe's telescoping tube.
 5. Exposed fasteners shall be high security.

2.06 ROOF ASSEMBLY

- A. Roof assembly shall include a single rear roof beam fabricated from 4.5" diameter multi-channel aluminum extruded tube.
 1. Aluminum shall be 6063-T6 with minimum thickness of 1/8".
 2. Extrusion shall contain integrated gasketing channels to support rear wall and roof framing.

3. Unused channels are concealed with matching extruded aluminum snap-in material.
- B. Rafters shall be fabricated from ½" aluminum plate and conform to roof radius design.
1. Roof Radius: 8'-3" as designed, with a tolerance of +/- 9" being acceptable. Any further deviation shall be reviewed by Omnitrans for aesthetic conformance.
 2. Rafters are fabricated with eight (8) ¼ x 20 x 1 ¼" self-clinching studs on top surface for securing roof panels.
 3. Rafters shall be slotted to roof beam channel and welded to rear beam.
 4. A single aluminum tube shall be welded to the lower front surface of rafters in order to form a single, unwelded roof structure utilizing no mechanical fasteners.
- C. Shelter Location Name Panel: A 6" tall, 1/8" aluminum sheet panel shall be included and securely attached at the underside of the roof along the full length of the front edge (street-facing). Each end of this panel shall terminate in a fillet of radius to match the panel height. Color, finish, and anti-graffiti coating shall match shelter. Shelter Location Name Text shall be provided by owner.
- D. Roof structure shall provide 8'-0" minimum vertical clearance between lowest point of underside of roof and sidewalk surface.
- E. Roof beams and rafters are pre-drilled during fabrication for field installation. No drilling shall be performed in the field.
- F. Roof panels material shall be 1/8" aluminum sheet panel.
- G. Roof panels are secured to the roof rafters with extruded and gasketed aluminum pressure ribs secured by ¼" flanged hex nut above a flat washer with a neoprene seal. No silicone sealers shall be used.
- H. Roof shall be waterproof with provisions for drainage away from waiting passengers and boarding area.

2.07 WALLS

- A. Wall panels include back walls and half-length end-walls.
- B. Panel materials include multiple options to meet aesthetic or other design criteria:

1. 16 gauge galvanized perforated steel panel, with 60% blockage using circular 1/4" diameter perforation on 3/8" staggered center pattern.
- C. Custom wall panels available for all shelter designs include:
1. Perforated metal with graphic.
 2. Perforated metal – no graphic.
- D. Walls shall be fabricated as sectional components for ease of installation and individual panel replacement:
1. Full-length panels, with graphic pattern.
 2. Full-length panels, no graphic pattern.
 3. Half-length panels, no graphic pattern.
- E. Wall panels are set in extruded glass rail mullions.
1. Glass rail mullions are secured to posts using welded tabs, with concealed fasteners.
 2. Wall panels are supported with full length rubber gasketing and secured by two part glass rail assembly using tamperproof fasteners.

2.08 FASTENERS

- A. All fasteners shall be stainless steel.
- B. All fasteners in roof assembly, posts and walls shall be concealed by extruded snap-in material.
- C. Exposed fasteners shall be high security.
- D. Ground attachment anchors shall be sized to meet wind load requirements, and shall be Hilti Kwik Bolt TZ anchors in conformance with ICC-ESR-1917.
- E. No self-tapping screws in tension shall be used in assembly of shelter components.

2.09 FINISH

- A. Shelters are finished in Super Durable baked powder coat enamel finish, with 4-5 mil final thickness.

- B. Owner shall provide the finish color selected from standard TCI RAL color chart. Custom colors available upon request.
- C. Super Durable powder coat finish meets ASTM D3359-02 Standard Test Method for Measuring Adhesion by Tape superseded by AST or D3359-17.
- D. Super Durable powder coat finish meets ASTM D4752-10 (2015) Standard Test Method for Measuring MEK Resistance of Ethyl Silicate (Inorganic) Zinc-Rich Primers by Solvent Rub.
- E. Anti-Graffiti: The basis of design is a protective coating of "Graffiti Proofer (GPA-300)" by manufacturer SEI Chemicals, and shall conform to the following:
 - 1. Applicable to any surface.
 - 2. Extreme chemical resistance – such that paint, graffiti, permanent marker, and stickers do not adhere (exceeding ASTM D6578 – (Standard practice for determination of Graffiti Resistance Test).
 - 3. Clear (non-yellowing) finish; quick-drying; non-sacrificial to applied surfaces.
 - 4. Heat-stable; UV-stable; Excellent longevity.
 - 5. VOC-, AQMD-, and CARB-compliant.

2.10 LIGHTING

- A. Deliver a solar autonomous system that provides sufficient illumination for safety and security needs, in and around the shelter.
- B. Summary:
 - 1. Each bus shelter shall provide security illumination from dusk to dawn and transition detection independent of overhead light levels.
 - 2. Solar powered lighting systems shall provide for timed dimming and automatic shut off preset programming.
 - 3. Lighting shall consist of sufficient LED's providing a minimum of 5 foot candles brilliance at bench height.
 - 4. Solar lighting solution shall provide a design that is vandal-resistant and aesthetically similar to roof in terms of material and color, with a low profile that will not attract attention and/or remain out of sight.

5. LED technology shall be used with a minimum of 50,000 hours of operation.
6. Each solar lighting system shall carry a Nationally Recognized Testing Laboratory (NRTL) Program certification. Products without a single system NRTL certification may have all major electrical components (defined as solar panel(s), batteries, LEDs and controller) with a NRTL listing.
7. Battery back-up (autonomy) shall provide for a minimum 7 days operation as calculated for the specific system load and geographic location.

C. Shelter Sizes & Types:

1. Solar units must be capable of mounting to the specified shelters.
2. All exposed metalwork will be powder coated to match shelter color and the finish is to be warranted for a minimum of 5 years, from acceptance.

D. Vandal Resistance:

1. Solar units shall include vandal-resistant hardware.
2. Security fasteners will be used for any exposed points.
3. Solar panels to be of low profile design to help hide them from view for aesthetic and vandal-resistant purposes.

E. Illuminated Areas:

1. Illumination for shelters is primarily intended for the interior seating areas. For the purpose of measuring light levels the area of illumination shall be approximately 45 square feet under the shelter roof.

F. LED Luminaire:

1. LEDs shall be certified by an NRTL.
2. Must also be field serviceable with minimal time and effort
3. Light output measurements shall be conducted at 6ft from LED fixture to determine the peak, average and minimum in an approximate 45 square feet under the shelter roof.

4. During the three winter months LEDs shall provide a minimum nightly peak 16 foot candles (fc), 2.5 fc average and minimum 0.1 fc in an area approximately 45 square feet under the shelter roof.
5. LED luminaire (fixture) is to be high intensity, cool white (5500-6000 Kelvin) color temperature and produce a minimum of 800 lumens
6. For the illuminated area referenced in #3 above, alternate LED optics or lens options may be provided as an option. All other LED luminaire specifications shall remain the same. Photometric plots or IES files must be provided for approval.

G. Photovoltaic – Solar Panels:

1. Provide a low-profile design.
2. Housing and attachment shall be visually similar to roof.
3. Rigid frame construction.
4. Must be NRTL listed.
5. Must carry a minimum 20 year power warranty.

H. Power Source:

1. Solar (12VDC or 24VDC) power source:
 - a. Each solar controller shall be factory set to have the capability to automatically adjust light level output to seasonal changes and or local weather conditions.
 - b. Each solar controller shall also contain a factory set real time clock for on/off transition accuracy and possess a self-test feature which is functional during the day without the use of any specialty tools.

I. Modular Design:

1. Solar units and their components must be of modular design to allow for independent replacement of solar collector, LED light bar, batteries and lighting control module.
2. Replacement part numbers shall be provided.

J. Batteries & Autonomy:

1. Batteries shall have a minimum 7 day autonomy or battery reserve.
2. Battery component shall be industry approved rechargeable, non-spillable, sealed, AGM (absorbed glass mat).
3. Batteries must be capable of providing a minimum of three years of trouble free charging and discharging as well as provide a five year pro-rated warranty. Solar unit must be capable of providing 5 days of full brightness, from a full charge, with no additional charging.
4. Batteries shall be integrated into the solar panel housing to keep them secure and out of sight.

K. Solar Controller Requirements:

1. The controller for all solar lighting systems shall be a single solution and be circuit board based, containing a real time clock for accuracy.
2. Where applicable, the controller as described above must automatically adjust for daylight savings.
3. Each controller should have an integral low voltage disconnect and be able to operate the LED luminaires as specified.
4. To avoid false transitions due to overhead and/or ambient light conditions, controllers which rely on solar module voltages or photocell to transition between on and off only will NOT be considered.
5. Functionality must also include a self-test feature which easily demonstrates LED operation and battery state of health. The self-test must be able to be performed by Agency staff during the day, without the use of any specialty tools.
6. The controller should be one complete unit; including a regulator, LED driver with a real time clock and self-test feature. A solar regulator coupled with a third party timer for LED light operation will NOT be considered.

L. Engineering Drawings:

1. Bidders shall provide with their bid a set of calculations and stamped drawings by a licensed California certified professional engineer.
2. Drawings should include structural and wind load calculations of the solar lighting systems on a typical bus shelter for the worst case environmental conditions in California.

M. Warranty Requirements:

1. Batteries will have a minimum five (5) year prorated warranty, from date of acceptance.
2. All system components including LEDs, controllers, wiring, solar panels, metal work, and associated hardware will have a minimum five (5) year warranty, from date of acceptance.
3. Replacement components under warranty must be made available within two (2) weeks of reported issue and determined remedy.

N. Solar & Battery Autonomy Calculations:

Detailed ALR (Array to Load Ratio) calculations based on the three worst winter months are required with the bid response to demonstrate the proposed solar system can deliver the required power and meet or exceed minimum battery autonomy (reserve) days of 7 days (during winter months) for each bus shelter lighting system.

ALR = available energy/used energy

This solicitation requires a minimum ALR of 1.25. A detailed explanation of calculations, for 7 days of autonomy, should be included with the bid response. For the purposes of solar and battery calculations vendors are reminded not to assume an optimal solar tilt nor optimal south facing solar array as bus shelters will have multiple orientations.

O. References:

1. Provide references of customers using the same solar lighting products as being bid.

P. Submittals – vendors are required to provide the following:

1. Professional Engineered drawings for solar lighting on a shelter in California.
2. Light output charts demonstrating minimum winter values (FC).
3. NRTL (system or all major electrical components including solar panel, batteries, controller, wire, fuse protection and LED fixture) Certification. Additional relevant certifications for QA and regulatory safety.

4. ALR and autonomy calculations based on worst period of the year (winter).
5. Warranty Statement.
6. Installation instructions.
7. Price schedule.
8. Replacement component and option pricing.

2.11 BENCH

- A. Basis of Design: Balance Bench – Backless Seat Option, by Form+Surfaces, or approved equal.
- B. Dimensions: 7'-0" overall length. Ensure the bench's length does not encroach upon the required clear floor space (30"x48") under the shelter, per ADA requirements. Seat formed at 18" above finish surface.
- C. Anti-Vagrant Bars: 3 bars, 6" high, spaced to allow for seating platforms of 20" to 24".
- D. Supports: Inverted "V" supports formed from ¾" sch. 40 pipe.
- E. Mounting: Surface mounted using stainless steel ½" expansion anchors as necessary to attach each end of the "V" supports to concrete pad or sidewalk.
- F. Color, Finish, & Anti-Graffiti: Durable baked polyester powder coat finish, 4-5 ml thick. The powder coating process produces minimal volatile organic compounds (VOCs). All material is to be sandblasted, cleaned and pretreated prior to the application of the selected color. Color and anti-graffiti coating shall match shelter. Contractor shall provide color samples, and the color shall be selected after contract award.
- G. All structural steel, unless otherwise noted on the drawings, shall be ASTM minimum yield strength 36,000 PSI. All aluminum members, unless otherwise noted on the drawings, shall be of Alloy 6063-T5. All holes shall be drilled or punched. All steel welding shall conform to American Welding Society Standard D1 1-10. Electrodes shall conform to AWS A5.1 Class E70XX. Aluminum welding shall conform to AWS standard D1 2-08. Electrodes shall conform to AWS/SFA 5.10 Class ER4043.
- H. All welding shall be done at the fabricators facility by AWS Certified welder.
- I. All welding and fabrication at the fabricator's facility shall include and not be

limited to: Design, fabrication and assembly of AWS D1.1; AWS D1.2; AWS D1.3, AWS D1.6; AISC Steel Construction Manual, 2012 International Building Code Section 1704.2; 1704.2.1; 1704.3; 1704.3.1 and structural fabrication at their facility.

- J. The fabricator shall meet the Quality Assurance and Quality Control requirements of these specs (Section 1.05), specifically subsection B-3 regarding accreditation/certification, and as it relates to approval of the fabricator's working Quality Systems Manual, that though facility inspections conducted by the accredited agency, outlines the fabricator's work process and ability to comply with the requirements of this project. Documentation that the selected fabricator has these processes and certification in place shall be provided with the bid response.
- K. All top level shop drawings, details of materials, fabrication, assembly and framing details, and erection drawings are to be included in the bid response.

2.12 ROUTE MAP DISPLAY

- A. Dimensions: Overall display size is 27.25" wide by 29.5" high. Its configuration shall be sub-divided into two areas:
 - 1. One (1) panel to accommodate a route map of 26" wide by 17" high.
 - 2. One (1) panel to accommodate three (3) pages of 8.5" wide by 11" high. This panel shall be located directly below the route map.
- B. Frame: Color, finish, and anti-graffiti coating shall match shelter.
- C. Glazing: The glazing for the gasketed door shall be Makrolon SL or similar polycarbonate (plexiglass) material (match Media Kiosk, if applicable). The door shall be secured with tamper proof fasteners. The hinge shall be a continuous piano hinge.
- D. Mounting: Frame shall be mounted to back wall panel via brackets. Frame shall be centered in width on the wall panel. Spacing between the top of the route map frame and the top of the wall panel shall be similar to the spacing between the sides of the route map frame and the sides of the wall panel frame.

2.13 E-SIGN

- A. Provide an electronic variable message sign that integrates with Omnitrans' current information system and has the flexibility to integrate with other major brand systems that Omnitrans may use in the future.

- B. Display: Bright, 2.0" high monochromatic LED display with 20-24 characters displayed at once. Standard ASCII character input. Low power draw preferred. Wayside shelter-mounted or equal.
- C. Data Connection: Cellular modem, to be integrated into E-Sign enclosure. Must be outdoor-hardened. Basis of design is Sierra Wireless Airlink Raven X, or approved equal.
- D. Vandal Resistance:
 - 1. Sign to be integrated into the shelter's design for aesthetic and vandal resistant purposes.
 - 2. Sign should include vandal resistant hardware.
 - 3. Security fasteners will be used for any exposed points.
- E. Provide Operations & Maintenance manuals.
- F. Factory service 1-year warranty on parts and labor.

2.14 MEDIA DISPLAY KIOSK

- A. Frame: Color, finish, and anti-graffiti coating shall match shelter.
- B. Glazing: The kiosk shall utilize 42" V-angled side-hinged, two door advertising displays, designed to fit the standard nationally recognized shelter display advertising size, with displays angled to the street to be viewable by oncoming cars.
- C. The glazing for the gasketed doors shall be Makrolon SL or similar polycarbonate (plexiglass) material. The doors shall be secured with tamper proof fasteners. The hinge shall be a continuous piano hinge.
- D. The kiosk illumination shall be provided by four 8 watt UL listed LED fixtures. The kiosk is to be illuminated for two hours before dawn and six hours after dusk.

2.15 TRASH RECEPTACLE

- A. Option Applicability to a specific site: As determined by Omnitrans.
- B. Product: "Outdoor Trash Can" as manufactured by "Secur" (item# HS35OW-CS), or approved equal.
- C. Capacity: 35-gal.
- D. Compliancy: Department of Homeland Security.

- E. Shape: Round.
- F. Material: 0.236" panels - clear in color for the body, with rain dome and frame of color to match shelter's finish.
- G. Mounting: Surface mounted via anchor holes in base of container.
- H. Location: Install trash receptacles in shaded areas a minimum 3'-0" from a bench, if possible.
- I. Warranty: 1-year.

2.16 BICYCLE PARKING RACK (OPTION)

- A. Option Applicability to a specific site: As determined by Omnitrans. To be installed by Omnitrans.
- B. Dimensions: 36" overall height, 20" overall width, 2" sch. 40 steel pipe (2.475" OD), 0.154 wall. Bends shall be produced by mandril style rotary drawn bending procedure.
- C. Mounting: Surface mounted using four stainless steel ½" expansion anchors to secure 6" diameter, 5/8" thick base plate at each end of the loop to concrete pad or sidewalk. Provide aluminum base covers – exposed fasteners shall be high security.
- D. Color, Finish, & Anti-Graffiti: Durable baked polyester powder coat finish, 4-5 ml thick. The powder coating process produces minimal volatile organic compounds (VOCs). All material is to be sandblasted, cleaned and pretreated prior to the application of the selected color. Color and anti-graffiti coating shall match shelter. Contractor shall provide color samples, and the color shall be selected after contract award.
- E. All structural steel, unless otherwise noted on the drawings, shall be ASTM minimum yield strength 36,000 PSI. All aluminum members, unless otherwise noted on the drawings, shall be of Alloy 6063-T5. All holes shall be drilled or punched. All steel welding shall conform to American Welding Society Standard D1 1-10. Electrodes shall conform to AWS A5.1 Class E70XX. Aluminum welding shall conform to AWS standard D1 2-08. Electrodes shall conform to AWS/SFA 5.10 Class ER4043.
- F. All welding shall be done at the fabricators facility by AWS Certified welder.
- G. All welding and fabrication at the fabricator's facility shall include and not be limited to: Design, fabrication and assembly of AWS D1.1; AWS D1.2; AWS D1.3, AWS D1.6; AISC Steel Construction Manual, 2012 International

Building Code Section 1704.2; 1704.2.1; 1704.3; 1704.3.1 and structural fabrication at their facility.

- H. The fabricator's facility shall use current versions of the AutoDesk Suite of design software to ensure seamless communication with the project team. The fabricator's facility shall track all project material through the use of an ERP system that allows for validation of material sourcing, material purchasing, all project steps, material use, labor routing, and costs tracking as control of the drawings and bills of material used in fabrication. This process shall be documented by the fabricator's quality control manual and work order travelers.
- I. The fabricator shall meet the Quality Assurance and Quality Control requirements of these specs (Section 1.05), specifically subsection B-3 regarding accreditation/certification, and as it relates to approval of the fabricator's working Quality Systems Manual, that though facility inspections conducted by the accredited agency, outlines the fabricator's work process and ability to comply with the requirements of this project. Documentation that the selected fabricator has these processes and certification in place shall be provided with the bid response.
- J. All top level shop drawings, details of materials, fabrication, assembly and framing details, and erection drawings are to be included in the bid response.

PART 3 – EXECUTION

3.01 PREPARATION

- A. Transmit submittals and deliverables required by this section.
- B. Furnish products as indicated.
- C. Existing surfaces to receive metal fabrications shall be sound, square, and true. Such surfaces shall be examined prior to installation of the fabrications and all defects which might impair the operability or shorten the life of any part of the item shall be corrected.

3.02 SHIPPING AND STORAGE

- A. Shelters are packaged and crated for delivery in knockdown and unassembled condition.
- B. Delivery and unloading requires client supplied pallet jack or forklift.

C. To the maximum extent possible, roofs and walls shall be assembled prior to shipping.

D. Store crated shelters in clean, dry, and level area. Do not stack crates.

3.03 INSTALLATION

A. Installation to be performed by Owner.

B. Manufacturer shall provide a complete detailed set of installation instructions.

3.04 SHELTER TEST AND CHECKOUT

A. Testing to be conducted by Owner.

B. Any operating difficulty or defective item shall be repaired or replaced and put into proper operation by the Manufacturer immediately, at no additional expense to Owner.

C. All materials for acceptance testing shall be provided by the manufacturer.

D. Owner shall determine final acceptance of the installed shelter upon successful completion of testing.

3.05 START-UP AND INSTRUCTIONS

A. Upon delivery, provide qualified representatives of shelter manufacturers for instruction of Owner's personnel in operation and maintenance of the shelter.

3.06 MAINTENANCE

A. Shelters will be cleaned routinely by Owner, and must be able to withstand mild household detergents as well as power-washing.

B. No chemical solvents are to be used in cleaning of shelters.

PART 4 - MEASUREMENT AND PAYMENT

4.01 MEASUREMENT

A. No separate measurement will be made for work of this section.

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SECTION 13 34 00

TRANSIT SHELTER – NO MEDIA KIOSK OPTION

PART 1 – GENERAL

1.01 DESCRIPTION

- A. Provide where shown on drawings shelter components as specified, complete and ready for operation. Each item shall be specifically designed for the intended function. Provide necessary accessories, items of equipment, electrical, and structural items, whether specified or not, for a properly installed and functional transit shelter.
- B. Equipment shall be suitable for installation in the space allocated on the drawings and operational within the limits of the available energy generated by the shelter's photovoltaic panels. Any modification or redesign of the shelter's structure or equipment power draw because of an alternate equipment selection by the Manufacturer shall be provided by the Manufacturer at no additional cost to Owner, only after approval of Owner.
- C. Where a device or part of the transit shelter is referred to in the singular number, it is intended that such reference shall apply to as many such devices as are required to complete the installation.
- D. Remove, relocate, and repair any items necessary for the proper installation of the transit shelter at no extra cost to Owner.

1.02 REFERENCES

- A. The Aluminum Association – Aluminum Design Manual 2010.
- B. American Welding Society – AWS Standard D1. 1-102 & D1 2-08.
- C. ASCE 7 2010 Minimum Design Loads for Buildings and Other Structures.
- D. ASTM B 209 Specification for Aluminum and Aluminum Alloy - Sheet and Plate.
- E. ASTM B221 Specification for Aluminum and Aluminum Alloy – Extruded Bars, Rods, Wire, Profiles, and Tubes.
- F. Americans with Disabilities Act of 1990 (ADA).
- G. Buy America 49 USC 5323(j)(1) and 49 CFR Part 661.

- H. NASA Atmospheric Science Data Center - Monthly Averaged Insolation (sun-hours) Incident on a Horizontal Surface 22-year Average, and Minimum and Maximum Difference from Monthly Averaged Insolation.
- I. OSHA Nationally Recognized Testing Laboratory Certification.

1.03 SUBMITTALS

- A. Manufacturer's product brochures and specifications.
- B. Manufacturer's shelter design drawings. Include elevations and connection details, as necessary.
- C. Signed and sealed structural engineering design documents performed by a California licensed engineer.
- D. Samples of shelter finish.
- E. Manufacturer's shelter installation instructions.
- F. Manufacturer's warranty documentation.
- G. Buy America Certification.
- H. Quality Assurance Certificate of Compliance.

1.04 DESIGN

- A. Shelters shall be engineered to meet or exceed applicable wind and seismic loads.
- B. Shelters shall be designed and manufactured in full compliance with local building codes.
- C. As designed, shelters shall be compliant with ADA provisions and related Federal guidelines, and shall remain compliant if installed per manufacturer instructions.
- D. Design shall include opportunity for agency branding as shown on the drawings, through choice of color, logo placement, or other means.
- E. All shelter components and equipment shall be designed and fabricated such that they allow easy maintenance of the type and frequency noted below:
 - a. Full wash-down (power wash) of shelter and accessories at least once a month;

- b. Removal of dirt, graffiti, chewing gum, and pasted material;
 - c. Wipe-down of glass surfaces;
 - d. Touch up of marred paint; and
 - e. Verifying of shelter lighting levels and replacement of LED luminaries.
- F. Shelter components and equipment shall be designed and fabricated to inhibit vandalism and create a safe environment.

1.05 QUALITY ASSURANCE AND QUALITY CONTROL

A. General:

1. Articles, materials, fittings, and equipment incorporated in the work shall be new and unused, of recent manufacture, free from defects and imperfections, and shall as far as practicable be the manufacturer's standard make and shall be of first grade industrial quality, suitable for the purpose intended and subject to approval by Owner.
2. Components used in the assembly of the system shall be standard, commercially available components and shall be manufactured by companies regularly engaged in the manufacture of the components.
3. The design shall provide for the interchangeability of items, such as wall panels, lights, route map, and advertisements.
4. Mixing of metric and United States customary units (non-metric) standards on the same equipment is not permitted.
5. Products or composite materials containing asbestos or lead shall not be utilized.
6. Work shall be performed in a neat and workmanlike manner by workers skilled in their respective trades, and materials and equipment shall be installed as recommended by the manufacturers and in accordance with specified codes and standards.
7. For purposes of designating type and quality of work under, the contract documents reference products by manufacturers listed in Part 2 – Products, and serve as the basis of design. This is intended to clearly communicate the design intent and the characteristics and features required.

8. The language of text for documents shall be English.
9. Dimensions shall be displayed in U.S. customary units.
10. Electrical apparatus shall be UL listed and bear UL label.

B. Qualifications of Manufacturer:

1. Manufacturer shall be a reputable manufacturing firm, regularly engaged in the design and manufacture of the type of equipment specified.
2. Manufacturer shall demonstrate at least five years' experience designing, manufacturing, and providing product support for transit shelters. Manufacturer may be requested to submit a list of at least two locations where similar shelters are installed and operating. Manufacturer shall be responsible for providing shelters of highest quality and workmanship, which will perform specified functions reliably and safely, and shall permit required maintenance procedures with minimum interference of service or degradation of reliability. In addition, commercial literature or drawings of these models shall be furnished for illustration.
3. Manufacturer shall provide proof of meeting the International Accreditation Services (IAS), International Building Code (IBC), and American Institute of Steel Construction (AISC) quality fabrication standards. This may be accomplished by either direct accreditation by these institutions, or by certification from an accredited third party.
4. An example of an accredited third party agency is the Clark County Building Department and Fire Prevention Bureau – and their nationally recognized fabricator program.
5. See the following links for more information:
 - i. http://www.iasonline.org/Fabricator_Inspection_Program/
 - ii. <http://www.clarkcountynv.gov/building/engineering/How%20To%20Guides/tg2.pdf>

C. Certificates:

1. Furnish an affidavit certifying that all materials and workmanship comply with the applicable code requirements.
2. Before final acceptance, furnish certificates of the authorities having jurisdiction.

- D. Certificates of Compliance: Upon delivery of the equipment, submit certificates of compliance. Each certificate shall be signed by an authorized representative of the manufacturer stating that the equipment complies in all respects with contract requirements.
- E. Warranty: All equipment shall be warranted, from date of acceptance, in accordance with the contract documents and the following provisions:
1. Manufacturer warrants that all materials and equipment furnished hereunder by the Manufacturer or suppliers will be free from defects in design, material, workmanship and operation for one full year from the date of successful completion of testing by the Owner, with the following caveats:
 - a. Limited Lifetime Structural Warranty on shelter and components for the expected lifetime of the product (10 years).
 - b. Powder coat finish warranty from fading or lifting (3 years).
 - c. Solar illumination systems (5 years).
 - d. Manufacturer shall maintain inventory of replacement parts for ten years after delivery of shelter.
 2. Manufacturer shall remedy any such defect at his own expense.
 3. Work that has been abused or neglected by Owner is excluded from this warranty.
 4. Manufacturer shall furnish written warranties required by the respective sections of the specifications for terms required therein. These warranties shall be in writing, on Manufacturer's or supplier's letterhead and shall be included in the operations and maintenance manual(s) as specified in this section.
 5. Major shelter components, specifically those manufactured by other than the primary supplier, shall be covered by their own respective warranties, which shall not be less than the supplier's standard warranty. These warranties shall also be included in the operations and maintenance manual(s).
 6. Nothing in these requirements, conditions, or specifications including Owner's right to a complete inspection shall constitute a disclaimer to or limit, negate, exclude, or modify in any way any warranty created hereunder.

1.06 BUY AMERICA

- A. As applied to manufactured products, shelters shall be 100% Buy America compliant and certified by manufacturer to meet 49 USC 5323(j)(1) and 49 CFR Part 661 for manufactured components.

1.07 DELIVERABLES

- A. Operation and maintenance manuals.
- B. Training program.
- C. Certificates.
- D. Special Tools: Two of each special tool, and instruments if any, required for operation or maintenance, packed in two appropriate steel tool boxes.
- E. Approved spare parts.

1.08 DELIVERY, STORAGE, AND HANDLING

- A. Pre-assemble system to greatest extent possible to minimize field assembly. Disassemble only as necessary for shipping and handling limitations. Clearly mark units for re-assembly and coordinated installation.
- B. Shelter and components shall be suitably packed or crated to prevent damage in transit or during handling. Items shall be carefully stored as required in a manner to avoid misalignment or distortion, and shall be adequately protected against damage by weather, construction, exposure, or other cause.
- C. All materials shall be delivered to the site as designated by Owner with their original manufacturer's markings and identification intact. Owner reserves the right to reject materials that are damaged, improperly identified, or not in conformance with reviewed shop drawings and catalog cuts.

PART 2 – PRODUCTS

2.01 BASIS OF DESIGN

- A. Signature Series, as manufactured by Tolar Manufacturing Company, Inc., or approved equal.

2.02 MATERIALS

- A. All structural aluminum components shall be minimum 6063-T5 alloy, unless otherwise noted.
- B. All aluminum extrusions shall be custom designs.
- C. Components shall be sized to comply with the load requirement for the project and shall not be less than the dimensions shown on specific plans.

2.03 FABRICATION

- A. All holes shall be drilled or punched.
- B. Aluminum welding shall conform to AWS Standard D1. 2-08. Electrodes shall conform to AWS/SFA 5.10 Class ER4043.
- C. All welding shall be done at manufacturing facility. No on-site welding is performed.
- D. All welding must be performed by AWS Certified welders.

2.04 SHELTER SIZES

- A. Standard Overall Size: 17'-0" x 6'-3" (roof perimeter size).
- B. Standard Depths: 2' nominal side wall (bus approach side), 4' nominal side wall (bus departure side).
- C. Standard Lengths: 16' nominal back wall.
- D. Standard Interior Clearance: 8'-0" minimum.
- E. Nominal dimensions measured to center of columns/posts.
- F. Custom dimensions available to meet aesthetic or other design criteria.

2.05 COLUMN/POSTS

- A. Posts shall be fabricated of all extruded aluminum material.
 - 1. Aluminum shall be 6063-T6 with minimum thickness of 1/8".
- B. Four (4) posts shall support the roof assembly and configured to provide full and half wall width footprint.
- C. In addition to the posts supporting the roof, two (2) additional post shall serve the following purpose:
 - 1. One (1) post per side wall to aid in supporting the side wall panels.
- D. Posts shall be 4.5" diameter multi-channel aluminum extrusion design.
 - 1. Channels shall utilize gasketing to seat and capture wall glazing.
 - 2. Unused channels shall be concealed by matching extruded snap-in material.
- E. Mounting: Surface-mounted utilizing adjustable shoes. Shoes shall be internally telescoping, allowing the posts to slide over the shoes.
 - 1. Shoes shall be 5/8" aluminum plate, circular in profile, 4" in height, And 9" - 12" in diameter (all uniform).
 - 2. Shoes shall include four (4) anchor holes to support installation of 1/2" x 8" stainless steel expansion anchors.
 - 3. Shoes shall be fabricated using 18" x 2" x 1/4" aluminum tube to provide a minimum of 12" height adjustment for anchoring and leveling the shelter on a suitable concrete pad.
 - 4. Posts shall come with a pre-drilled hole in the base of each post as a guide to field-drill a corresponding hole in the shoe's telescoping tube.
 - 5. Exposed fasteners shall be high security.

2.06 ROOF ASSEMBLY

- A. Roof assembly shall include a single rear roof beam fabricated from 4.5" diameter multi-channel aluminum extruded tube.
 - 1. Aluminum shall be 6063-T6 with minimum thickness of 1/8".

2. Extrusion shall contain integrated gasketing channels to support rear wall and roof framing.
 3. Unused channels are concealed with matching extruded aluminum snap-in material.
- B. Rafters shall be fabricated from ½" aluminum plate and conform to roof radius design.
1. Roof Radius: 8'-3" as designed, with a tolerance of +/- 9" being acceptable. Any further deviation shall be reviewed by Omnitrans for aesthetic conformance.
 2. Rafters are fabricated with eight (8) ¼ x 20 x 1 ¼" self-clinching studs on top surface for securing roof panels.
 3. Rafters shall be slotted to roof beam channel and welded to rear beam.
 4. A single aluminum tube shall be welded to the lower front surface of rafters in order to form a single, unwelded roof structure utilizing no mechanical fasteners.
- C. Shelter Location Name Panel: A 6" tall, 1/8" aluminum sheet panel shall be included and securely attached at the underside of the roof along the full length of the front edge (street-facing). Each end of this panel shall terminate in a fillet of radius to match the panel height. Color, finish, and anti-graffiti coating shall match shelter. Shelter Location Name Text shall be provided by owner.
- D. Roof structure shall provide 8'-0" minimum vertical clearance between lowest point of underside of roof and sidewalk surface.
- E. Roof beams and rafters are pre-drilled during fabrication for field installation. No drilling shall be performed in the field.
- F. Roof panels material shall be 1/8" aluminum sheet panel.
- G. Roof panels are secured to the roof rafters with extruded and gasketed aluminum pressure ribs secured by ¼" flanged hex nut above a flat washer with a neoprene seal. No silicone sealers shall be used.
- H. Roof shall be waterproof with provisions for drainage away from waiting passengers and boarding area.

2.07 WALLS

- A. Wall panels include back walls and half-length end-walls.
- B. Panel materials include multiple options to meet aesthetic or other design criteria:
 - 1. 16 gauge galvanized perforated steel panel, with 60% blockage using circular 1/4" diameter perforation on 3/8" staggered center pattern.
- C. Custom wall panels available for all shelter designs include:
 - 1. Perforated metal panel – with graphic.
 - 2. Perforated metal – no graphic.
- D. Walls shall be fabricated as sectional components for ease of installation and individual panel replacement:
 - 1. Full-length panels, with graphic pattern.
 - 2. Full-length panels, no graphic pattern.
 - 3. Half-length panels, no graphic pattern.
- E. Wall panels are set in extruded glass rail mullions.
 - 1. Glass rail mullions are secured to posts using welded tabs, with concealed fasteners.
 - 2. Wall panels are supported with full length rubber gasketing and secured by two part glass rail assembly using tamperproof fasteners.

2.08 FASTENERS

- A. All fasteners shall be stainless steel.
- B. All fasteners in roof assembly, posts and walls shall be concealed by extruded snap-in material.
- C. Exposed fasteners shall be high security.
- D. Ground attachment anchors shall be sized to meet wind load requirements, and shall be Hilti Kwik Bolt TZ anchors in conformance with ICC-ESR-1917.
- E. No self-tapping screws in tension shall be used in assembly of shelter components.

2.09 FINISH

- A. Shelters are finished in Super Durable baked powder coat enamel finish, with 4-5 mil final thickness.
- B. Finish color selected from standard TCI RAL color chart. Custom colors available upon request.
- C. Super Durable powder coat finish meets ASTM D3359-02 Standard Test Method for Measuring Adhesion by Tape.
- D. Super Durable powder coat finish meets ASTM D4752-10 Standard Test Method for Measuring MEK Resistance of Ethyl Silicate (Inorganic) Zinc-Rich Primers by Solvent Rub.
- E. Anti-Graffiti: The basis of design is a protective coating of "Graffiti Proofer (GPA-300)" by manufacturer SEI Chemicals, and shall conform to the following:
 - 1. Applicable to any surface.
 - 2. Extreme chemical resistance – such that paint, graffiti, permanent marker, and stickers do not adhere (exceeding ASTM D6578 – Graffiti Resistance Test).
 - 3. Clear (non-yellowing) finish; quick-drying; non-sacrificial to applied surfaces.
 - 4. Heat-stable; UV-stable; Excellent longevity.
 - 5. VOC-, AQMD-, and CARB-compliant.

2.10 LIGHTING

- A. Deliver a solar autonomous system that provides sufficient illumination for safety and security needs, in and around the shelter.
- B. Summary:
 - 1. Each bus shelter shall provide security illumination from dusk to dawn and transition detection independent of overhead light levels.
 - 2. Solar powered lighting systems shall provide for timed dimming and automatic shut off preset programming.
 - 3. Lighting shall consist of sufficient LED's providing a minimum of 5 foot candles brilliance at bench height.

4. Solar lighting solution shall provide a design that is vandal-resistant and aesthetically similar to roof in terms of material and color, with a low profile that will not attract attention and/or remain out of sight.
5. LED technology shall be used with a minimum of 50,000 hours of operation.
6. Each solar lighting system shall carry a Nationally Recognized Testing Laboratory (NRTL) Program certification. Products without a single system NRTL certification may have all major electrical components (defined as solar panel(s), batteries, LEDs and controller) with a NRTL listing.
7. Battery back-up (autonomy) shall provide for a minimum 7 days operation as calculated for the specific system load and geographic location.

C. Shelter Sizes & Types:

1. Solar units must be capable of mounting to the specified shelters.
2. All exposed metalwork will be powder coated to match shelter color and the finish is to be warranted for a minimum of 5 years, from acceptance.

D. Vandal Resistance:

1. Solar units shall include vandal-resistant hardware.
2. Security fasteners will be used for any exposed points.
3. Solar panels to be of low profile design to help hide them from view for aesthetic and vandal resistant purposes.

E. Illuminated Areas:

1. Illumination for shelters is primarily intended for the interior seating areas. For the purpose of measuring light levels the area of illumination shall be approximately 45 square feet under the shelter roof.

F. LED Luminaire:

1. LEDs shall be certified by an NRTL.
2. Must also be field serviceable with minimal time and effort.

3. Light output measurements shall be conducted at 6ft from LED fixture to determine the peak, average and minimum in an approximate 45 square feet under the shelter roof.
4. During the three winter months LEDs shall provide a minimum nightly peak 16 foot candles (fc), 2.5 fc average and minimum 0.1 fc in an area approximately 45 square feet under the shelter roof.
5. LED luminaire (fixture) is to be high intensity, cool white (5500-6000 Kelvin) color temperature and produce a minimum of 800 lumens.
6. For the illuminated area referenced in #3 above, alternate LED optics or lens options may be provided as an option. All other LED luminaire specifications shall remain the same. Photometric plots or IES files must be provided for approval.

G. Photovoltaic – Solar Panels:

1. Provide a low-profile design.
2. Housing and attachment shall be visually similar to roof.
3. Rigid frame construction.
4. Must be NRTL listed.
5. Must carry a minimum 20year power warranty.

H. Power Source:

1. Solar (12VDC or 24VDC) power source:
 - a) Each solar controller shall be factory set to have the capability to automatically adjust light level output to seasonal changes and or local weather conditions.
 - b) Each solar controller shall also contain a factory set real time clock for on/off transition accuracy and possess a self-test feature which is functional during the day without the use of any specialty tools.

I. Modular Design:

1. Solar units and their components must be of modular design to allow for independent replacement of solar collector, LED light bar, batteries and lighting control module.
2. Replacement part numbers shall be provided.

J. Batteries & Autonomy:

1. Batteries shall have a minimum 7 day autonomy or battery reserve.
2. Battery component shall be industry approved rechargeable, non spillable, sealed, AGM (absorbed glass mat).
3. Batteries must be capable of providing a minimum of three years of trouble free charging and discharging as well as provide a five year pro-rated warranty. Solar unit must be capable of providing 5 days of full brightness, from a full charge, with no additional charging.
4. Batteries shall be integrated into the solar panel housing to keep them secure and out of sight.

K. Solar Controller Requirements:

1. The controller for all solar lighting systems shall be a single solution and be circuit board based, containing a real time clock for accuracy.
2. Where applicable, the controller as described above must automatically adjust for daylight savings.
3. Each controller should have an integral low voltage disconnect and be able to operate the LED luminaires as specified.
4. To avoid false transitions due to overhead and/or ambient light conditions, controllers which rely on solar module voltages or photocell to transition between on and off only will NOT be considered.
5. Functionality must also include a self-test feature which easily demonstrates LED operation and battery state of health. The self-test must be able to be performed by Agency staff during the day, without the use of any specialty tools.
6. The controller should be one complete unit; including a regulator, LED driver with a real time clock and self-test feature. A solar regulator

coupled with a third party timer for LED light operation will NOT be considered.

L. Engineering Drawings:

1. Bidders shall provide with their bid a set of calculations and stamped drawings by a licensed California certified professional engineer.
2. Drawings should include structural and wind load calculations of the solar lighting systems on a typical bus shelter for the worst case environmental conditions in California.

M. Warranty Requirements:

1. Batteries will have a minimum five (5) year prorated warranty, from date of acceptance.
2. All system components including LEDs, controllers, wiring, solar panels, metal work, and associated hardware will have a minimum five (5) year warranty, from date of acceptance.
3. Replacement components under warranty must be made available within two (2) weeks of reported issue and determined remedy.

N. Solar & Battery Autonomy Calculations:

Detailed ALR (Array to Load Ratio) calculations based on the three worst winter months are required with the bid to demonstrate the proposed solar system can deliver the required power and meet or exceed minimum battery autonomy (reserve) days of 7 days (during winter months) for each bus shelter lighting system.

ALR = available energy/used energy

This solicitation requires a minimum ALR of 1.25. A detailed explanation of calculations, for 7 days of autonomy, should be included with the bid response. For the purposes of solar and battery calculations vendors are reminded not to assume an optimal solar tilt nor optimal south facing solar array as bus shelters will have multiple orientations.

O. References:

1. Provide references of customers using the same solar lighting products as being bid.

P. Submittals – vendors are required to provide the following:

1. Professional Engineered drawings for solar lighting on a shelter in California.
2. Light output charts demonstrating minimum winter values (FC).
3. NRTL (system or all major electrical components including solar panel, batteries, controller, wire, fuse protection and LED fixture) Certification. Additional relevant certifications for QA and regulatory safety.
4. ALR and autonomy calculations based on worst period of the year (winter).
5. Warranty Statement.
6. Installation instructions.
7. Price schedule.
8. Replacement component and option pricing.

2.11 BENCH

- A. Basis of Design: Balance Bench – Backless Seat Option, by Form+Surfaces, or approved equal.
- B. Dimensions: 10'-6" overall length. Ensure the bench's length does not encroach upon the required clear floor space (30"x48") under the shelter, per ADA requirements. Seat formed at 18" above finish surface.
- C. Anti-Vagrant Bars: 4 bars, 6" high, spaced to allow for seating platforms of 20" to 24".
- D. Supports: Inverted "V" supports formed from ¾" sch. 40 pipe.
- E. Mounting: Surface mounted using stainless steel ½" expansion anchors as necessary to attach each end of the "V" supports to concrete pad or sidewalk.
- F. Color, Finish, & Anti-Graffiti: Durable baked polyester powder coat finish, 4-

5 ml thick. The powder coating process produces minimal volatile organic compounds (VOCs). All material is to be sandblasted, cleaned and pretreated prior to the application of the selected color. Color and anti-graffiti coating shall match shelter.

- G. All structural steel, unless otherwise noted on the drawings, shall be ASTM minimum yield strength 36,000 PSI. All aluminum members, unless otherwise noted on the drawings, shall be of Alloy 6063-T5. All holes shall be drilled or punched. All steel welding shall conform to American Welding Society Standard D1 1-10. Electrodes shall conform to AWS A5.1 Class E70XX. Aluminum welding shall conform to AWS standard D1 2-08. Electrodes shall conform to AWS/SFA 5.10 Class ER4043.
- H. All welding shall be done at the fabricators facility by AWS Certified welder.
- I. All welding and fabrication at the fabricator's facility shall include and not be limited to: Design, fabrication and assembly of AWS D1.1; AWS D1.2; AWS D1.3, AWS D1.6; AISC Steel Construction Manual, 2012 International Building Code Section 1704.2; 1704.2.1; 1704.3; 1704.3.1 and structural fabrication at their facility.
- J. The fabricator's facility shall use current versions of the AutoDesk Suite of design software to ensure seamless communication with the project team. The fabricator's facility shall track all project material through the use of an ERP system that allows for validation of material sourcing, material purchasing, all project steps, material use, labor routing, and costs tracking as control of the drawings and bills of material used in fabrication. This process shall be documented by the fabricator's quality control manual and work order travelers.
- K. The fabricator shall meet the Quality Assurance and Quality Control requirements of these specs (Section 1.05), specifically subsection B-3 regarding accreditation/certification, and as it relates to approval of the fabricator's working Quality Systems Manual, that though facility inspections conducted by the accredited agency, outlines the fabricator's work process and ability to comply with the requirements of this project. Documentation that the selected fabricator has these processes and certification in place shall be provided with the bid response.
- L. All top level shop drawings, details of materials, fabrication, assembly and framing details, and erection drawings are to be included in the bid response.

2.12 ROUTE MAP DISPLAY

- A. Dimensions: Overall display size is 27.25" wide by 29.5" high. Its configuration shall be sub-divided into two areas:

1. One (1) panel to accommodate a route map of 26" wide by 17" high.
 2. One (1) panel to accommodate three (3) pages of 8.5" wide by 11" high. This panel shall be located directly below the route map.
- B. Frame: Color, finish, and anti-graffiti coating shall match shelter.
- C. Glazing: The glazing for the gasketed door shall be Makrolon SL or similar polycarbonate (plexiglass) material (match Media Kiosk, if applicable). The door shall be secured with tamper proof fasteners. The hinge shall be a continuous piano hinge.
- D. Mounting: Frame shall be mounted to back wall panel via brackets. Frame shall be centered in width on the wall panel. Spacing between the top of the route map frame and the top of the wall panel shall be similar to the spacing between the sides of the route map frame and the sides of the wall panel frame.

2.13 E-SIGN

- A. Provide an electronic variable message sign that integrates with OmniTrans' current NextBus information system and has the flexibility to integrate with other major brand systems that Omnitrans may use in the future.
- B. Display: Bright, 2.0" high monochromatic LED display with 20-24 characters displayed at once. Standard ASCII character input. Low power draw preferred. Wayside shelter-mounted or equal.
- C. Data Connection: Cellular modem, to be integrated into E-Sign enclosure. Must be outdoor-hardened. Basis of design is Sierra Wireless Airlink Raven X, or approved equal.
- D. Vandal Resistance:
1. Sign to be integrated into the shelter's design for aesthetic and vandal resistant purposes.
 2. Sign should include vandal resistant hardware.
 3. Security fasteners will be used for any exposed points.
- E. Provide Operations & Maintenance manuals.
- F. Factory service 1-year warranty on parts and labor.

2.14 MEDIA DISPLAY KIOSK

- A. Not included in this design.

2.15 TRASH RECEPTACLE

- A. Option Applicability to a specific site: As determined by OmniTrans.
- B. Product: "Outdoor Trash Can" as manufactured by "Securr" (item# HS35OW-CS), or approved equal.
- C. Capacity: 35-gal.
- D. Compliancy: Department of Homeland Security.
- E. Shape: Round.
- F. Material: 0.236" panels - clear in color for the body. Rain dome and frame of color to match shelter's finish. Anti-graffiti coating to match shelter.
- G. Mounting: Surface mounted via anchor holes in base of container.
- H. Location: Install trash receptacles in shaded areas a minimum 3'-0" from a bench, if possible.
- I. Warranty: 1-year.

2.16 BICYCLE PARKING RACK (OPTION)

- A. Option Applicability to a specific site: As determined by Omnitrans. To be installed by Omnitrans.
- B. Dimensions: 36" overall height, 20" overall width, 2" sch. 40 steel pipe (2.475" OD), 0.154 wall. Bends shall be produced by mandril style rotary drawn bending procedure.
- C. Mounting: Surface mounted using four stainless steel ½" expansion anchors to secure 6" diameter, 5/8" thick base plate at each end of the loop to concrete pad or sidewalk. Provide aluminum base covers – exposed fasteners shall be high security.
- D. Color, Finish, & Anti-Graffiti: Durable baked polyester powder coat finish, 4-5 ml thick. The powder coating process produces minimal volatile organic compounds (VOCs). All material is to be sandblasted, cleaned and pretreated prior to the application of the selected color. Color and anti-graffiti

coating shall match shelter.

- E. All structural steel, unless otherwise noted on the drawings, shall be ASTM minimum yield strength 36,000 PSI. All aluminum members, unless otherwise noted on the drawings, shall be of Alloy 6063-T5. All holes shall be drilled or punched. All steel welding shall conform to American Welding Society Standard D1 1-10. Electrodes shall conform to AWS A5.1 Class E70XX. Aluminum welding shall conform to AWS standard D1 2-08. Electrodes shall conform to AWS/SFA 5.10 Class ER4043.
- F. All welding shall be done at the fabricators facility by AWS Certified welder.
- G. All welding and fabrication at the fabricator's facility shall include and not be limited to: Design, fabrication and assembly of AWS D1.1; AWS D1.2; AWS D1.3, AWS D1.6; AISC Steel Construction Manual, 2012 International Building Code Section 1704.2; 1704.2.1; 1704.3; 1704.3.1 and structural fabrication at their facility.
- H. The fabricator's facility shall use current versions of the AutoDesk Suite of design software to ensure seamless communication with the project team. The fabricator's facility shall track all project material through the use of an ERP system that allows for validation of material sourcing, material purchasing, all project steps, material use, labor routing, and costs tracking as control of the drawings and bills of material used in fabrication. This process shall be documented by the fabricator's quality control manual and work order travelers.
- I. The fabricator shall meet the Quality Assurance and Quality Control requirements of these specs (Section 1.05), specifically subsection B-3 regarding accreditation/certification, and as it relates to approval of the fabricator's working Quality Systems Manual, that though facility inspections conducted by the accredited agency, outlines the fabricator's work process and ability to comply with the requirements of this project. Documentation that the selected fabricator has these processes and certification in place shall be provided with the bid response.
- J. All top level shop drawings, details of materials, fabrication, assembly and framing details, and erection drawings are to be included in the bid response.

PART 3 – EXECUTION

3.01 PREPARATION

- A. Transmit submittals and deliverables required by this section.

- B. Furnish products as indicated.
- C. Existing surfaces to receive metal fabrications shall be sound, square, and true. Such surfaces shall be examined prior to installation of the fabrications and all defects which might impair the operability or shorten the life of any part of the item shall be corrected.

3.02 SHIPPING AND STORAGE

- A. Shelters are packaged and crated for delivery in knockdown and unassembled condition.
- B. Delivery and unloading requires client supplied pallet jack or forklift.
- C. To the maximum extent possible, roofs and walls shall be assembled prior to shipping.
- D. Store crated shelters in clean, dry, and level area. Do not stack crates.

3.03 INSTALLATION

- A. Installation to be performed by Owner.
- B. Manufacturer shall provide a complete detailed set of installation instructions.

3.04 SHELTER TEST AND CHECKOUT

- A. Testing to be conducted by Owner.
- B. Any operating difficulty or defective item shall be repaired or replaced and put into proper operation by the Manufacturer immediately, at no additional expense to Owner.
- C. All materials for acceptance testing shall be provided by the manufacturer.
- D. Owner shall determine final acceptance of the installed shelter upon successful completion of testing.

3.05 START-UP AND INSTRUCTIONS

- A. During this period, provide qualified representatives of shelter manufacturers for instruction of Owner's personnel in operation and maintenance of the shelter.

3.06 MAINTENANCE

- A. Shelters will be cleaned routinely by Owner, and must be able to withstand mild household detergents as well as power-washing.
- B. No chemical solvents are to be used in cleaning of shelters.

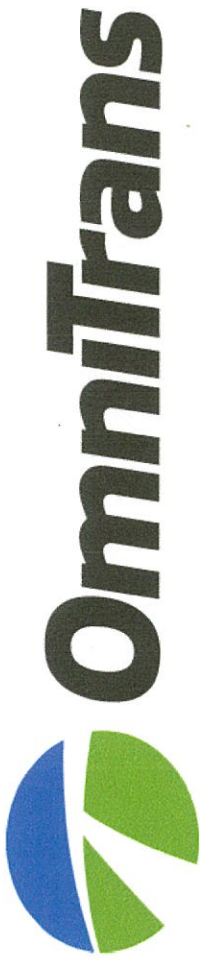
PART 4 - MEASUREMENT AND PAYMENT

4.01 MEASUREMENT

- A. No separate measurement will be made for work of this section.

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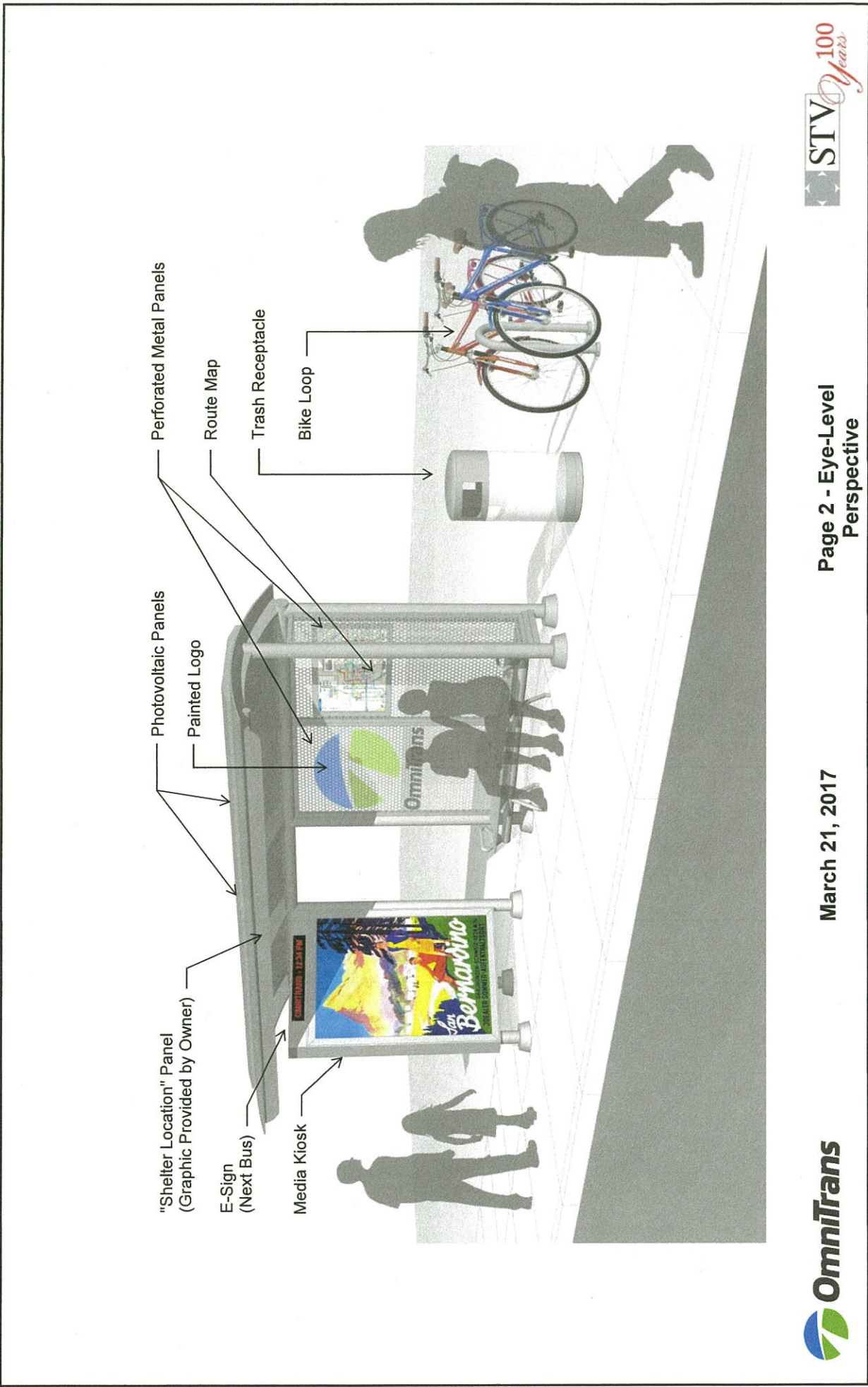
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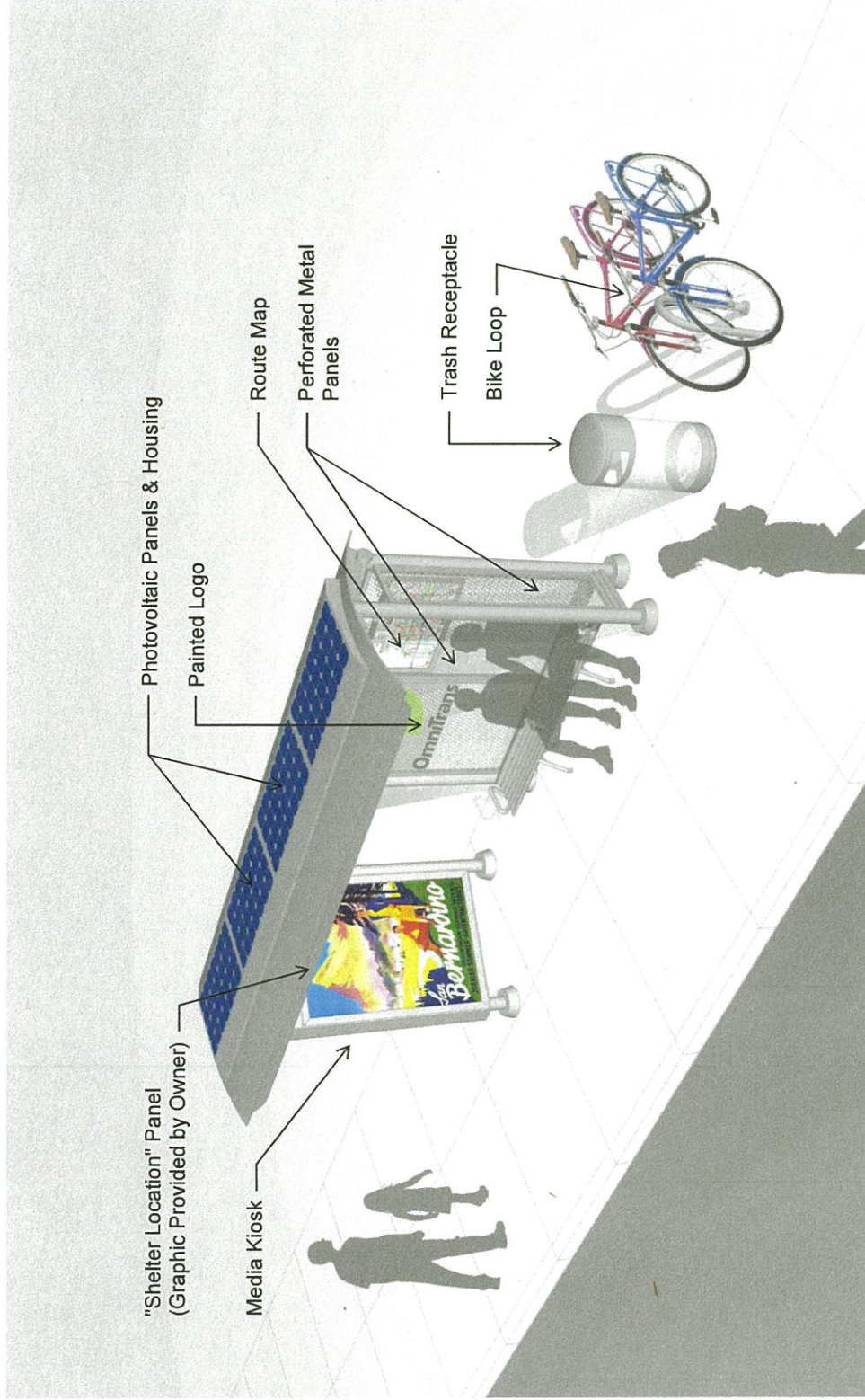
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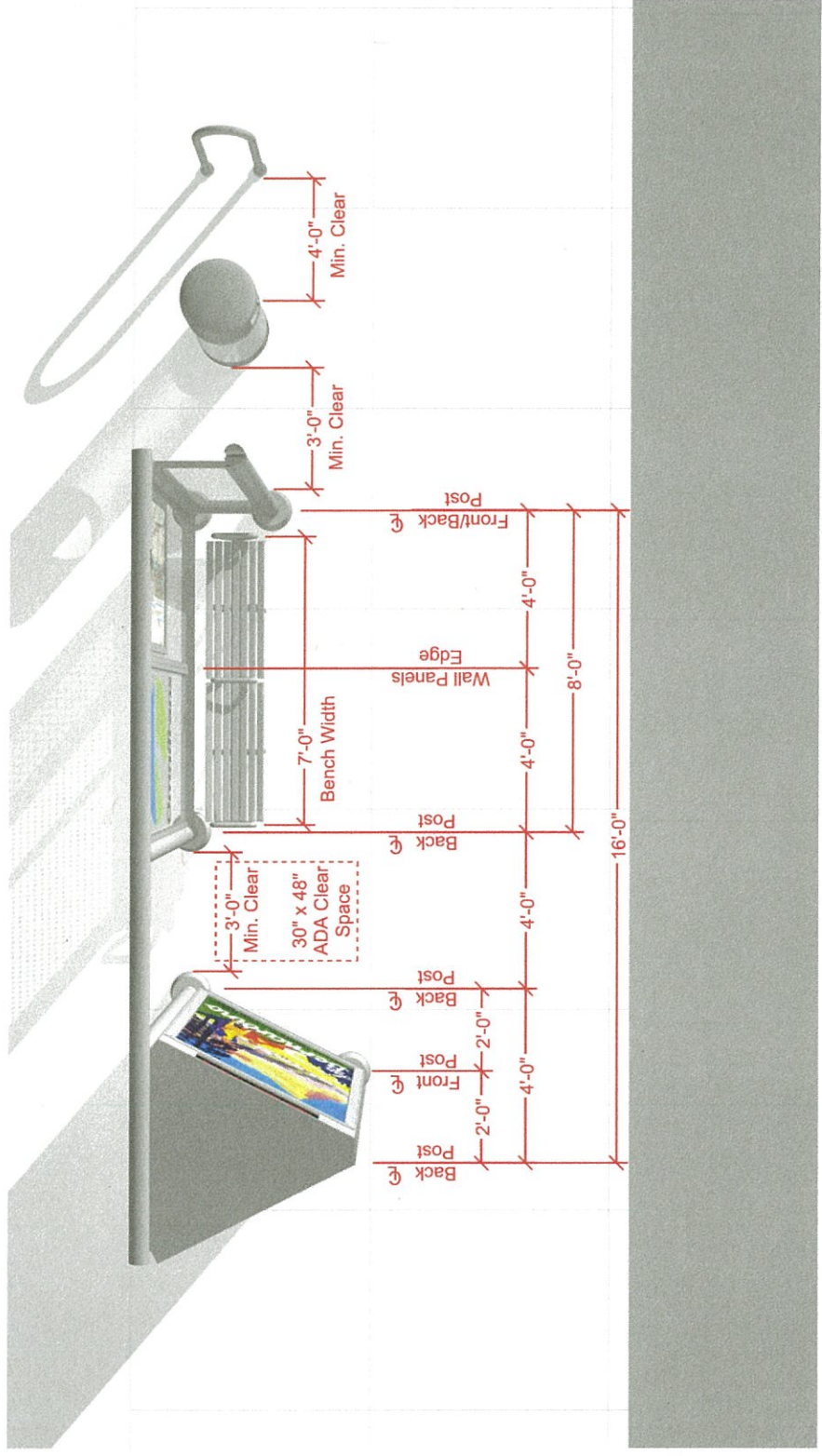
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3. Aerial Perspective
4. Plan Perspective
5. Left Elevation Perspective
6. Front Elevation Perspective
7. Right Elevation Perspective

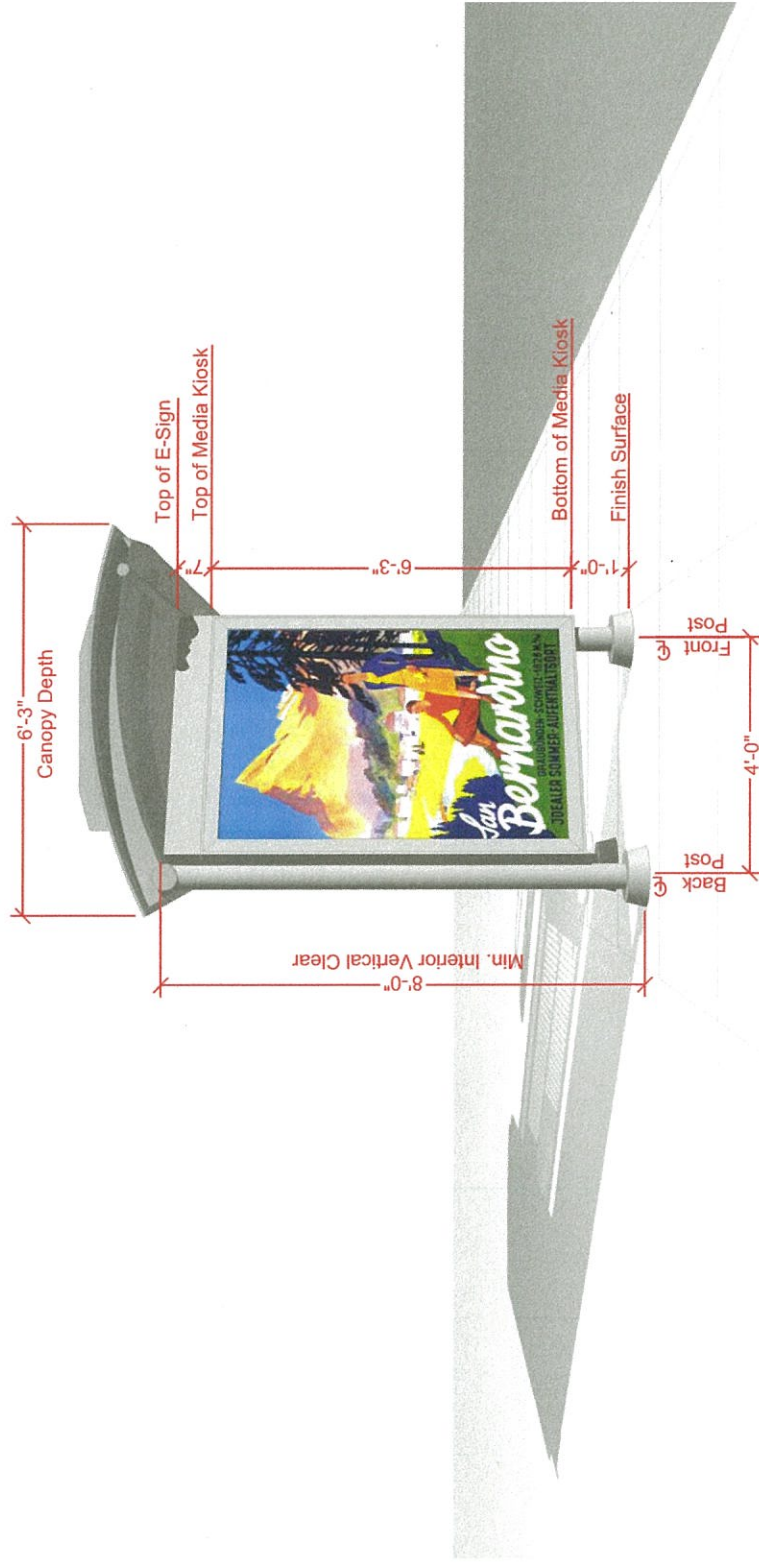
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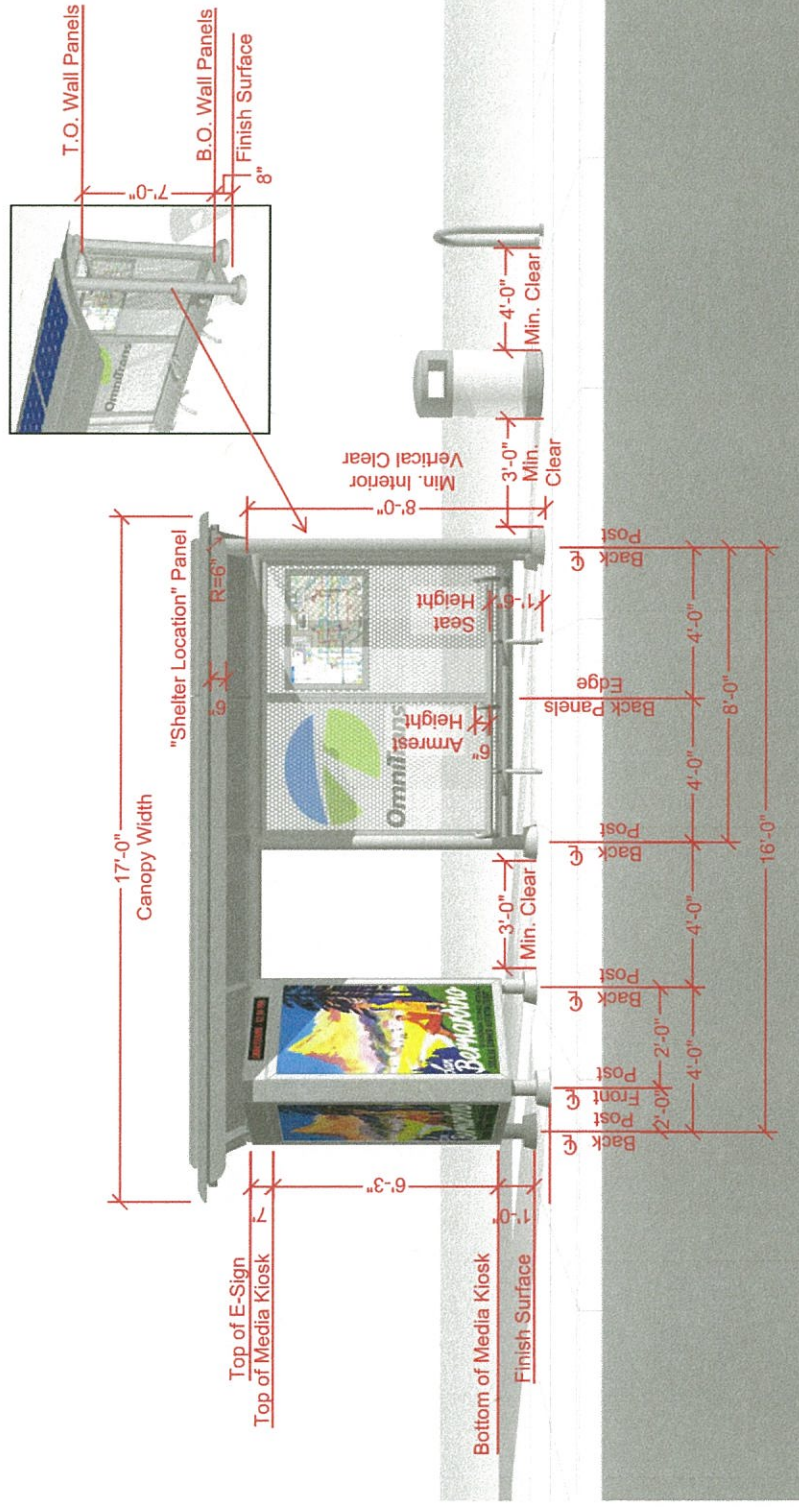
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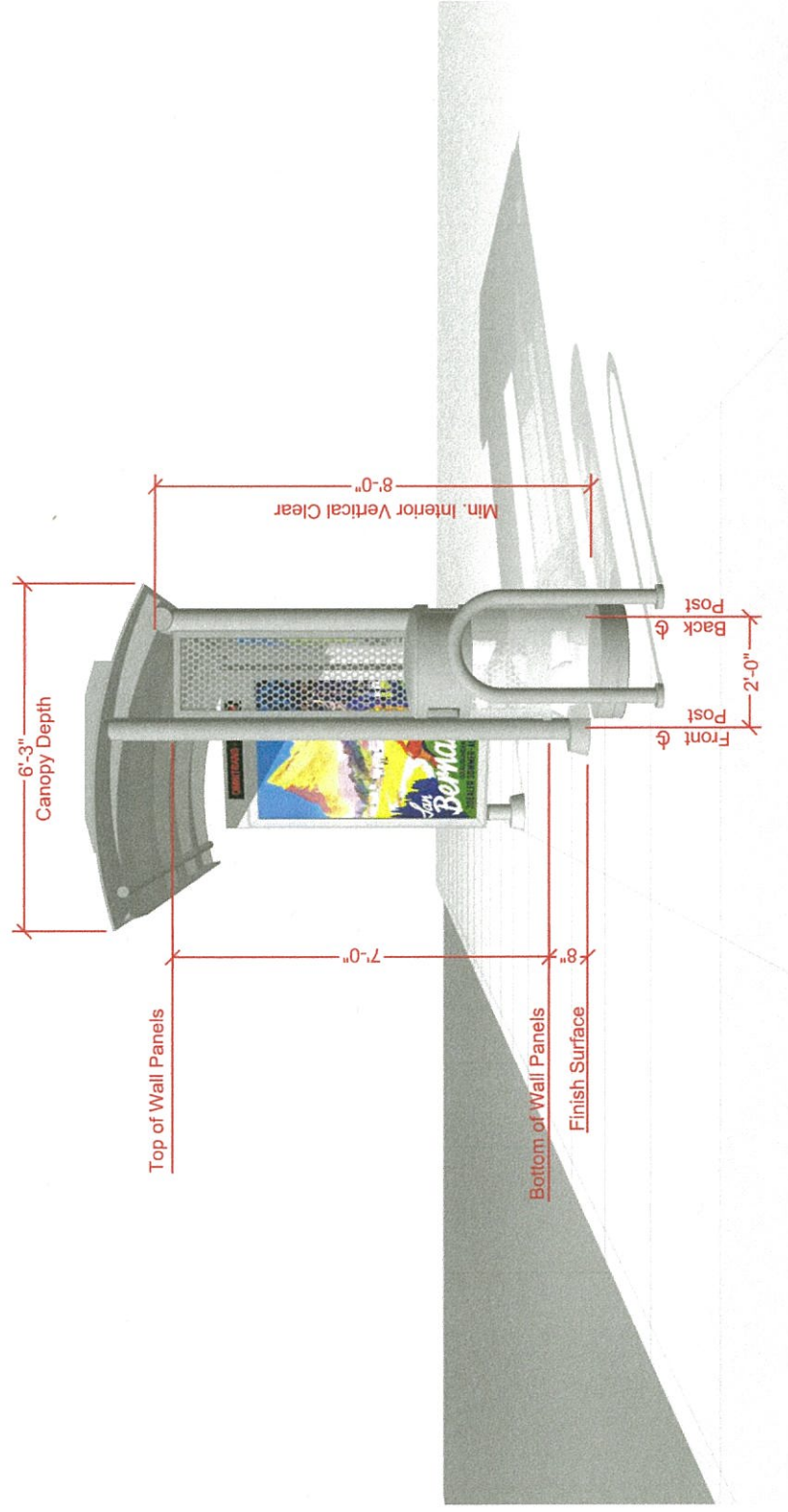














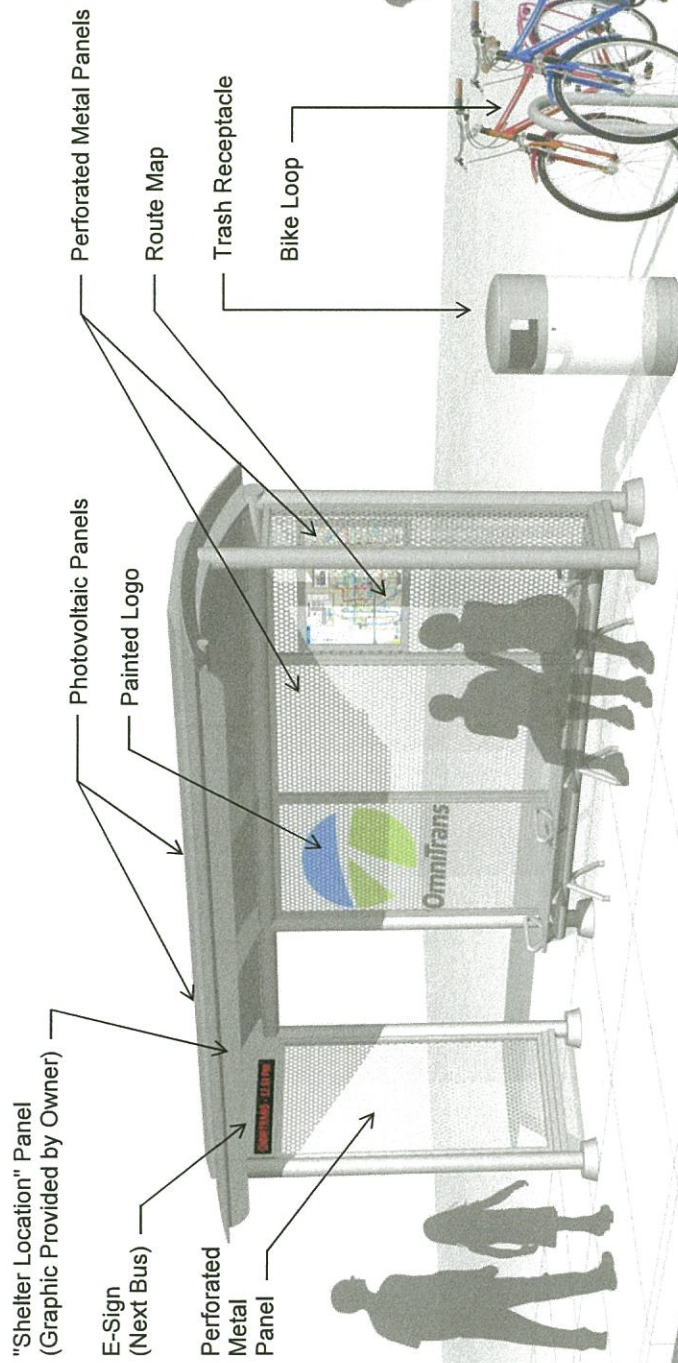
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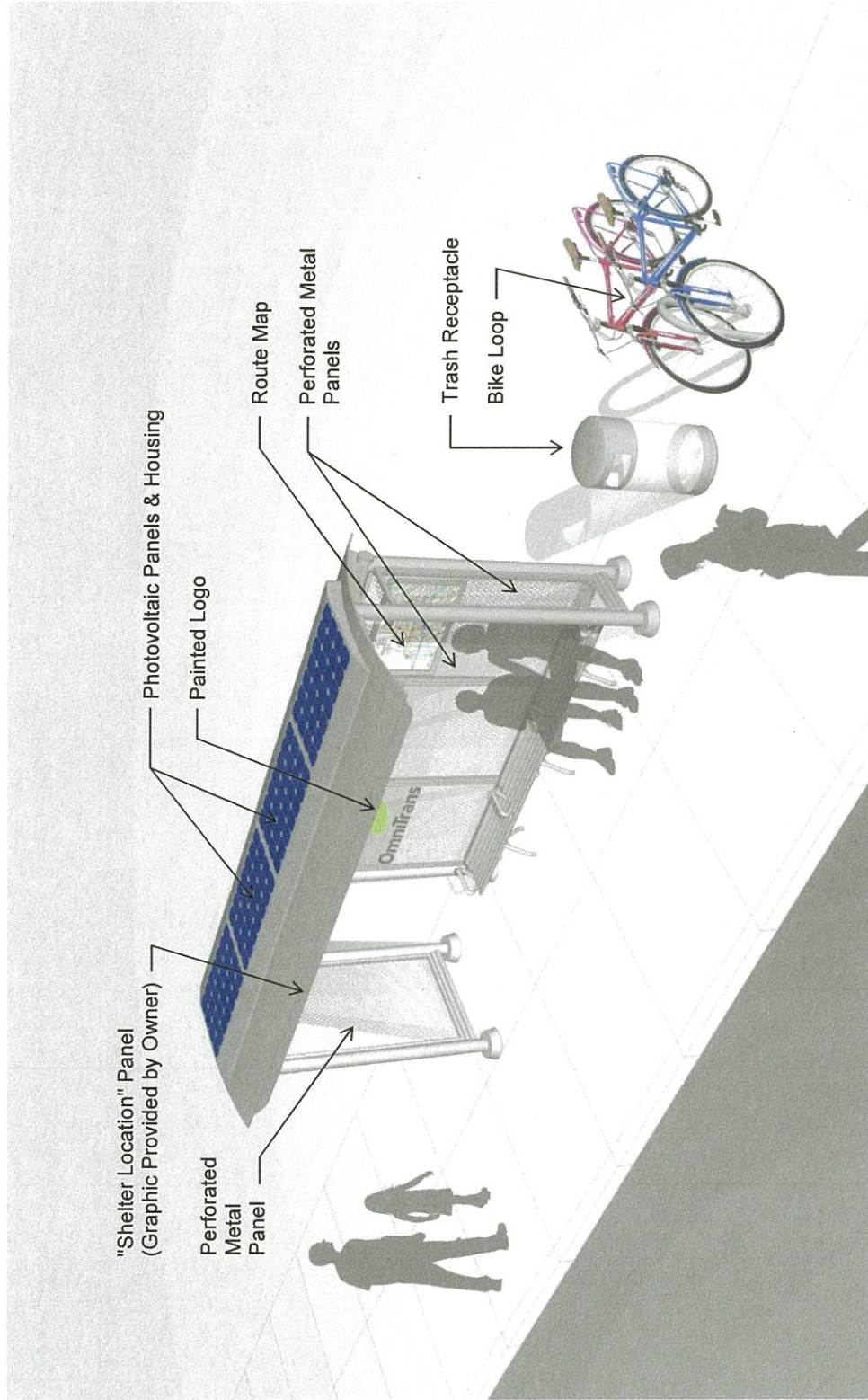
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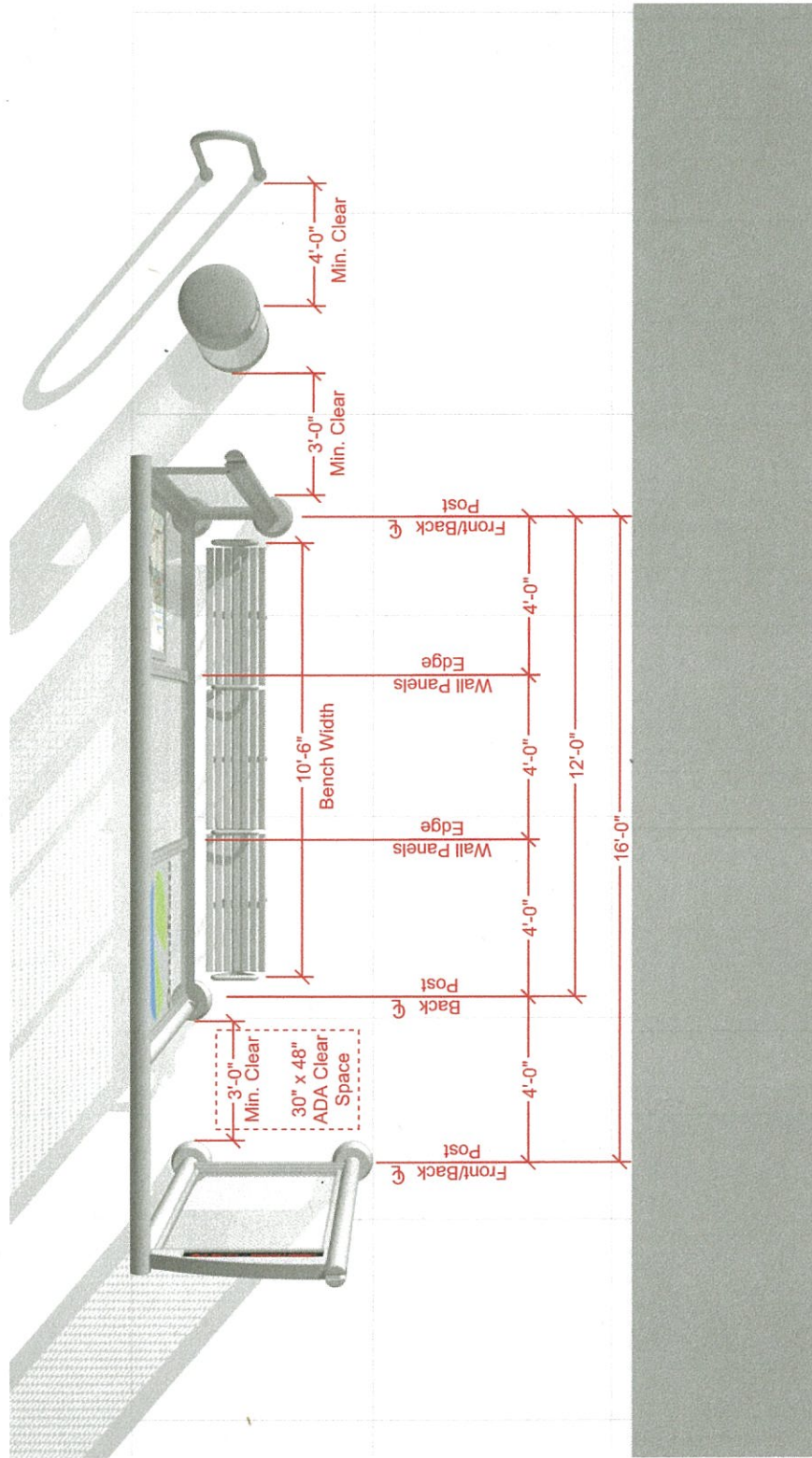
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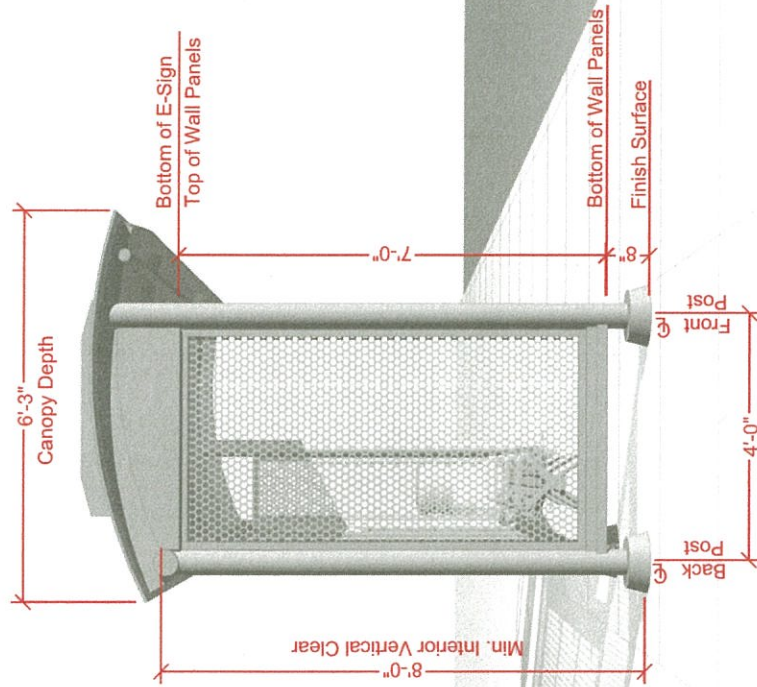
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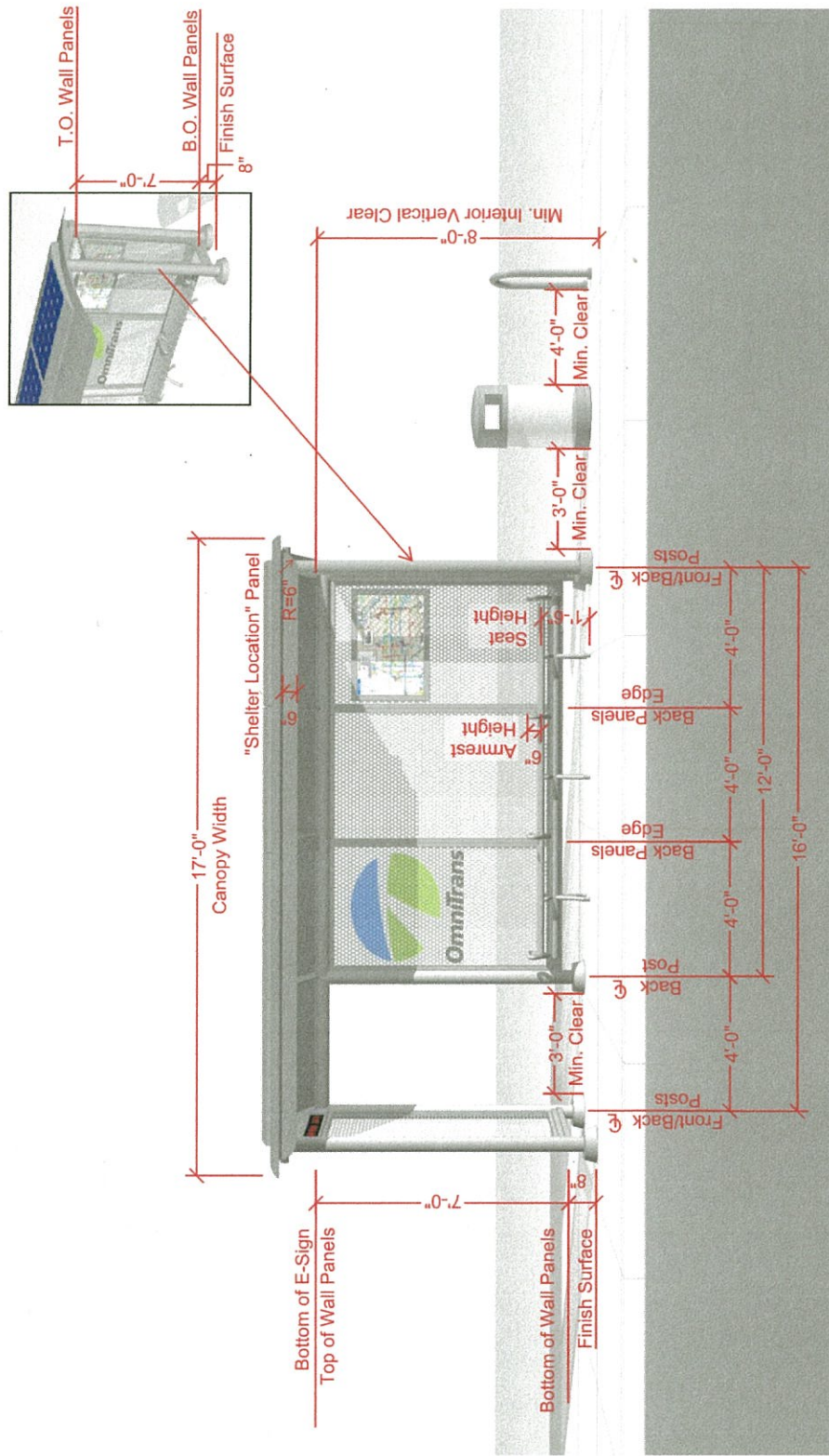
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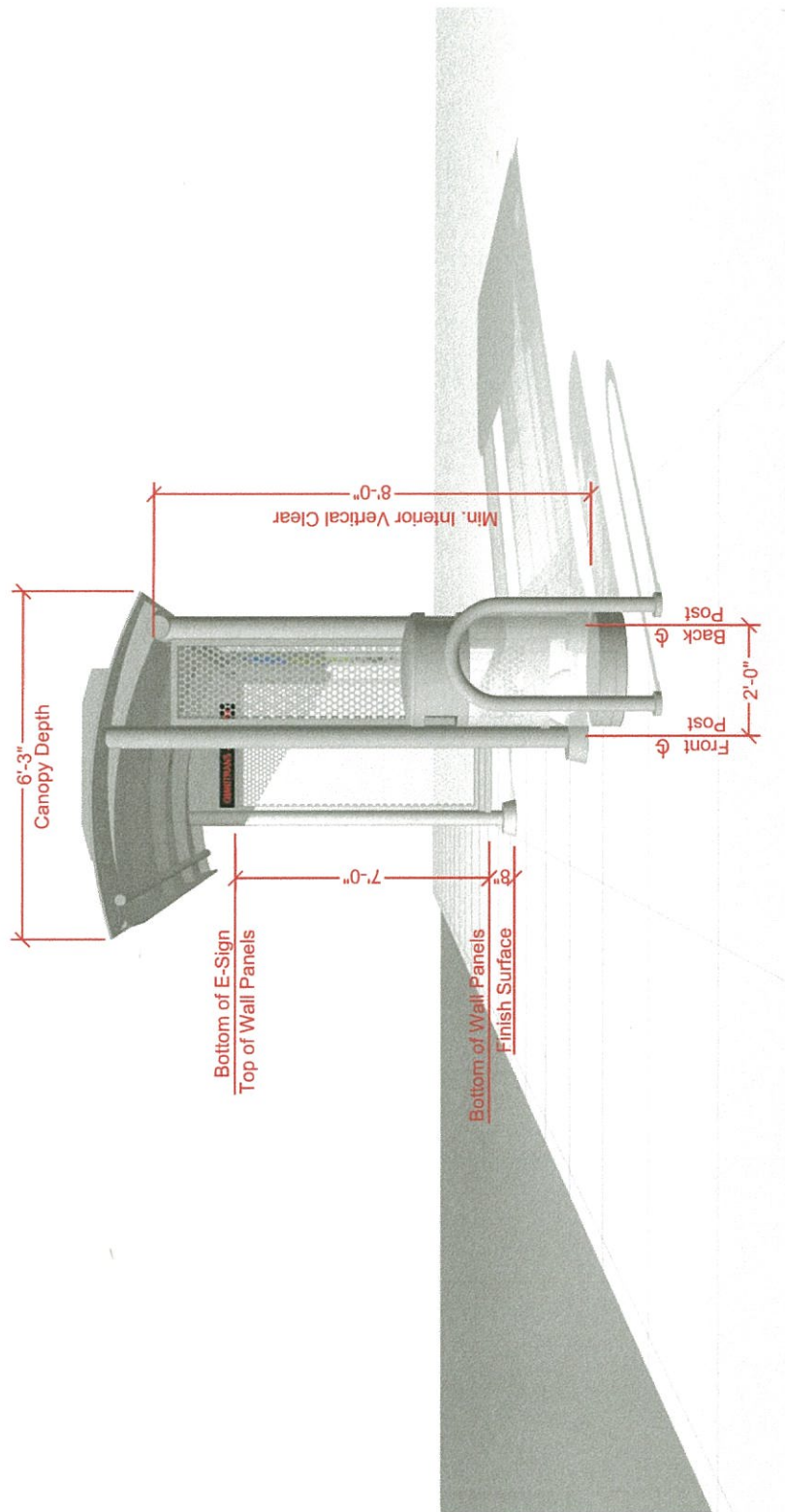












ATTACHMENT “B”

Attachment B

REGULATORY REQUIREMENT

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REGULATORY REQUIREMENTS

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

RR-01

ADMINISTRATIVE CODE *

A. Applicability

This Article applies to all contracts.

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

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

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

C. Campaign Contributions

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

RR-02

DISCRIMINATION *

A. Applicability

This Article applies to all contracts.

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

RR-03

WHISTLEBLOWER REQUIREMENTS *

A. Applicability

This Article applies to all contracts.

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

RR-04

PUBLIC RECORDS ACT *

A. Applicability

This Article applies to all contracts.

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

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

RR-05

ACCESS TO RECORDS *

A. Applicability

This Article applies to all federally funded contracts.

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

RR-06

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

A. Applicability

This Article applies to all federally funded contracts.

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

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

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

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

RR-07

ENERGY CONSERVATION REQUIREMENTS

A. Applicability

This Article applies to all federally funded contracts.

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

RR-08

CIVIL RIGHTS REQUIREMENTS *

A. Applicability

This Article applies to all federally funded contracts.

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

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

C. Equal Employment Opportunity

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

RR-09

NO GOVERNMENT OBLIGATION TO THIRD PARTIES *

A. Applicability

This Article applies to all federally funded contracts.

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

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

RR-10

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS *

A. Applicability

This Article applies to all federally funded contracts.

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

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

RR-11

SUSPENSION AND DEBARMENT*

A. Applicability

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

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

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

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

RR-12

RECYCLED PRODUCTS

A. Applicability

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

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

RR-13

CLEAN WATER AND CLEAN AIR REQUIREMENTS*

A. Applicability

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

B. CLEAN WATER REQUIREMENTS

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

C. CLEAN AIR

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

D. 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 3.3%.
- 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>

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.

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BONDING REQUIREMENTS

Applicability to Contracts

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

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

RR-24

DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

Background and Application

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

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

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

Clause Language

Davis-Bacon and Copeland Anti-Kickback Acts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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PRIVACY ACT - 5 U.S.C. 552

Applicability to Contracts

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

Flow Down

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

Model Clause/Language

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

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

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

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

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

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

Applicability to Contracts

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

Flow Down

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

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

notice of termination will state the time period in which cure is permitted and other appropriate conditions

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

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

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

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

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

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

Applicability to Contracts

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

Flow Down

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

Model Clauses/Language

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

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

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

Applicability to Contracts

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

Flow Down

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

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

final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to Omnitrans Construction Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of Omnitrans Project Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

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

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

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

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

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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”

**ATTACHMENT C – COST/PRICE
MKP18-08
PREMIUM BUS SHELTERS**

Item	Firm Fixed Price Amount
Shelter (Base Years 1-3)	\$37,507.32
*Grand Total Six Shelters (Base Years 1-3)	\$225,043.92

Pricing shall remain fixed for the first three (3) years. All subsequent year pricing shall be determined in November of each year using the change (increase or decrease) of the Consumer Price Index (CPI).

**TRANSIT SHELTER WITH MEDIA KIOSK OPTION
BASE YEARS 1 - 3**

Item	Quantity	Unit	Unit Price
Shelter w/Media Kiosk	1	EA	\$24,549.00
Bench	1	EA	\$1,500.00
Trash Can	1	EA	\$1,295.00
PV Panel	1	EA	\$6,785.00
Delivery	1	LOT	\$600.00
Sales Tax at 8%	1	LOT	\$2,778.32
Grand Total			\$37,502.32

**TRANSIT SHELTER WITHOUT MEDIA KIOSK OPTION
BASE YEARS 1 - 3**

Item	Quantity	Unit	Unit Price
Shelter	1	EA	\$23,150.00
Bench	1	EA	\$1,500.00
Trash Can	1	EA	\$1,295.00
PV Panel	1	EA	\$5,642.00
Delivery	1	LOT	\$600.00
Sales Tax at 8%	1	LOT	\$2,574.96
Grand Total			\$34,761.96

**OPTIONAL ITEMS
BASE YEARS 1 - 3**

Optional Item	Quantity	Unit	Unit Price
Bicycle Rack	1	EA	\$225.00

ATTACHMENT “D”

**Omnitrans****PERSONNEL POLICY MANUAL**

POLICY 707 PAGE 1 OF 6

SUBJECT**PROHIBITING WEAPONS IN THE WORKPLACE****APPROVED BY OMNITRANS
BOARD OF DIRECTORS**

DATE: June 7, 2017

I. Purpose

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

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

II. Scope

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

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

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

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

III. Procedure**A. COMMUNICATION OF POLICY**

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

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

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DATE: June 7, 2017

B. PROHIBITED CONDUCT

(a) The transportation of firearms or weapons in Agency vehicles is prohibited.

This includes but is not limited to:

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

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

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

C. SEARCH

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

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

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

D. DISCIPLINE

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

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up to and including separation of employment.

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

E. REPORT OF VIOLATIONS**1. Employee Violations**

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

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

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

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

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

2. Visitor Violations

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

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

F. FALSE REPORTS

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

G. ROLES AND RESPONSIBILITIES

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

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

H. SAFETY FIRST

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

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

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

I. ANTI-RETALIATION PROVISION

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

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J. DEFINITIONS

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



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

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

SIGNS

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