



Connecting Our Community.

**REVISED**

**BOARD OF DIRECTORS MEETING  
WEDNESDAY, JULY 10, 2019 – 8:00 A.M.  
OMNITRANS METRO FACILITY  
1700 WEST 5<sup>TH</sup> STREET  
SAN BERNARDINO, CA 92411**

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

**A. CALL TO ORDER**

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

**B. ANNOUNCEMENTS/PRESENTATIONS**

1. Next Board Meeting: Wednesday, September 4, 2019 – 8:00 a.m.

**C. COMMUNICATIONS FROM THE PUBLIC**

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

**D. POSSIBLE CONFLICT OF INTEREST ISSUES**

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

3

**E. CONSENT CALENDAR**

The following items are expected to be routine and non-controversial. The Board will act upon them at one time without discussion, unless the Board directs that an item be held for further discussion under Agenda Item F, Discussion Items. Any person wishing to address consent items should address the Board under Agenda Item #E9, Action on Consent Calendar.

1. Approve Board Minutes – June 5, 2019
2. Receive and File Administrative & Finance Committee Minutes – May 9, 2019 (A&F 6/13/19)
3. Adopt Resolution No. 314-19, Approving Amendment to California Transit Systems Joint Powers Authority (CalTIP) Agreement – *P. Scott Graham*
4. Adopt Resolution No. 315-19, Amending Omnitrans' Conflict of Interest Code – *Adrienne Fernandez*
5. Authorize the CEO/General Manager to Enter into a Cooperative Agreement with the City of Ontario – Transformative Climate Communities Grant – *Anna Jaiswal* (6/13/19 A&F)

6  
12  
15  
60  
75



Connecting Our Community.

**REVISED**

**BOARD OF DIRECTORS MEETING  
WEDNESDAY, JULY 10, 2019 – 8:00 A.M.  
OMNITRANS METRO FACILITY  
1700 WEST 5<sup>TH</sup> STREET  
SAN BERNARDINO, CA 92411**

**E. CONSENT CALENDAR CONTINUED**

- |  |     |
|--|-----|
| 6. Approve Policy 701, Substance Abuse (Alcohol, Drugs and Narcotics) Updates – <i>Suzanne Pfeiffer</i> (6/13/19 A&F)  | 77  |
| 7. Approve the Re-Organization of the Human Resources Department, Reclassification of Human Resources Analyst and Update to Policy 402 – <i>Suzanne Pfeiffer</i> (6/13/19 A&F) | 151 |
| 8. Authorize Award (Bench) – Contracts MNT19-42 (A-C), Paint and Body Shop Supplies  | 157 |
| 9. Action on Consent Calendar  |     |

**F. DISCUSSION ITEMS**

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

- |   |     |
|---|-----|
| 1. CEO/General Manager's Report - <i>P. Scott Graham</i>  | 159 |
| 2. Update on AB 1457, Omnitrans Transit District Legislation – <i>P. Scott Graham</i>   | 160 |
| 3. Approve Proposed Revisions to Disadvantaged Business Enterprise (DBE) Program for Federal Transit Administration (FTA) Assisted Contracts – <i>Eugenia Pinheiro</i>  | 180 |
| 4. Adopt the Revised Proposed Overall Disadvantaged Business Enterprise (DBE) Goal for Federal Transit Administration (FTA) Assisted Contracts (October 1, 2018 - September 30, 2021) – <i>Eugenia Pinheiro</i> ( <i>Revised Item</i> ) | 210 |
| 5. Authorize Award (Bench) – Contracts MNT19-46 (A-G) Transit Bus Parts – <i>Eugenia Pinheiro</i>   | 229 |

**G. PUBLIC HEARING**

- |  |     |
|--|-----|
| 1. Close Public Hearing – Federal Transit Administration Fiscal Year 2020 Section 5307, 5310 and 5339 Funds – <i>Maurice Mansion</i> | 231 |
|--|-----|

**H. BOARD BUSINESS**

**Closed Session**

- |  |  |
|--|--|
| 1. Conference with Labor Negotiator, P. Scott Graham, concerning labor negotiations with Amalgamated Transit Union Local No. 1704 regarding the Coach Operator Unit, pursuant to Government Code Section 54957.6 – <i>Suzanne Pfeiffer</i> |  |
|--|--|

**I. REMARKS AND ANNOUNCEMENTS**

**J. ADJOURNMENT**

ITEM #         D1        

**DATE:** July 10, 2019

**TO:** Board Chair David Avila and Members of the Omnitrans Board of Directors

**THROUGH:** P. Scott Graham, CEO/General Manager

**FROM:** Eugenia F. Pinheiro, Contracts Manager

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

**FORM MOTION**

Staff hereby provides a listing of principals and subcontractors associated with action items on the agenda for the Board of Director's Meeting scheduled July 10, 2019.

Item	Contract	Principals & Agents	Subcontractors
#E8	Authorize Award (Bench) Contracts MNT19-42 (A-C) Paint and Body Shop Supplies	<i>Finishmaster, Inc.</i> <i>Indianapolis, IN</i> <i>Matthew VonGunten</i> <i>Controller</i>  <i>Smitty's Auto Paints of Hemet, Inc.</i> <i>Hemet, CA</i> <i>Melissa Galletta</i> <i>Corporate Secretary</i>  <i>Sunbelt Sports Paint, Inc.</i> <i>Santa Fe Springs, CA</i> <i>Marian Stan</i> <i>Manager</i>	N/A
#F5	Authorize Award (Bench) Contracts MNT19-46 (A-G) Transit Bus Parts	<i>American Moving Parts, LLC</i> <i>Los Angeles, CA</i> <i>Ernie Cisneros</i> <i>Vice President of Sales</i>  <i>CBM US, Inc.</i> <i>Cambridge, MA</i> <i>Walt Supplee</i> <i>Sales Manager</i>	N/A

<b>Item</b>	<b>Contract</b>	<b>Principals &amp; Agents</b>	<b>Subcontractors</b>
		<i>Dartco Transmission Sales and Services, Inc.</i> <i>Anaheim, CA</i> <i>Jim Peek</i> <i>Vice President</i>	
		<i>Kirk's Automotive, Inc.</i> <i>Detroit, MI</i> <i>Robert Kirkman</i> <i>President</i>	
		<i>Mohawk Mfg. &amp; Supply, Co.</i> <i>Niles, IL</i> <i>Robert L. Brown</i> <i>Executive Vice President</i>	
		<i>Muncie Reclamation and Supply Company</i> <i>dba Muncie Transit Supply</i> <i>Muncie, IN</i> <i>Becky Huff</i> <i>Contract Manager</i>	
		<i>The Aftermarket Parts Company, LLC</i> <i>Delaware, OH</i> <i>Kerri Moloney</i> <i>Vice President, Customer Service</i>	

PSG:EFPP

## CONFLICT OF INTEREST FORM

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

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

### BOARD MEMBER INFORMATION

BOARD MEMBER NAME	CITY/COUNTY NAME	MEETING DATE

### CAMPAIGN CONTRIBUTIONS

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

### FINANCIAL INTEREST

1. I have a financial interest of \_\_\_\_\_  
State income, real property interest or business position  
\_\_\_\_\_  
Identify company or property location
2. I have a financial interest of \_\_\_\_\_  
State income, real property interest or business position  
\_\_\_\_\_

### SIGNATURE

Board Member Signature	Date
------------------------	------

ITEM # \_\_\_\_\_ E1 \_\_\_\_\_

**BOARD OF DIRECTORS' MEETING  
MINUTES OF JUNE 5, 2019**

**A. CALL TO ORDER**

Chairman Ron Dailey called the regular meeting of the Omnitrans Board of Directors to order at 8:00 a.m., Wednesday, June 5, 2019, at the Omnitrans Facility located at 1700 West 5th Street, San Bernardino, California.

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

**BOARD MEMBERS PRESENT**

Council Member Ron Dailey, City of Loma Linda – Chairman  
Mayor John Dutrey, City of Montclair  
Mayor Paul Foster, City of Redlands  
Supervisor Josie Gonzales, County of San Bernardino  
Supervisor Curt Hagman, County of San Bernardino  
Mayor Pro Tem Larry McCallon, City of Highland - Alternate  
Mayor Darcy McNaboe, City of Grand Terrace  
Mayor Cynthia Moran, City of Chino Hills  
Mayor Frank Navarro, City of Colton  
Council Member John Roberts, City of Fontana  
Supervisor Dawn Rowe, County of San Bernardino  
Supervisor Janice Rutherford, County of San Bernardino  
Council Member Sam Spagnolo, City of Rancho Cucamonga  
Mayor Debbie Stone, City of Upland  
Mayor Eunice Ulloa, City of Chino  
Mayor John Valdivia, City of San Bernardino  
Council Member Alan Wapner, City of Ontario

**BOARD MEMBERS NOT PRESENT**

Mayor Pro Tem David Avila, City of Yucaipa – Vice Chairman  
Mayor Deborah Robertson, City of Rialto

**OMNITRANS' ADMINISTRATIVE STAFF PRESENT**

P. Scott Graham, CEO/General Manager  
Trischelle Baysden, Director of Rail  
Shawn Brophy, Director of Operations

Jeremiah Bryant, Director of Strategic Development  
Jacob Harms, Director of Information Technology  
Suzanne Pfeiffer, Director of Human Resources  
Connie Raya, Director of Maintenance  
Doug Stanley, Director of Special Transportation Services  
Don Walker, Director of Finance  
Wendy Williams, Director of Marketing  
Omar Bryant, Maintenance Manager  
Melissa Castillo, Customer Service Manager  
Barbara Erwin, Safety & Regulatory Compliance Manager  
Adrienne Fernandez, Executive Staff Assistant  
Denise Gibson, Human Resource Specialist  
Anna Jaiswal, Development Planning Manager  
Janice Kuhn, Marketing Specialist  
Ray Maldonado, Employee Relations Manager  
Maurice Mansion, Treasury Manager  
Eugenia Pinheiro, Contracts Manager  
Krystal Turner, Contracts Administrator  
Christine Van Matre, Contracts Administrator

**LEGAL COUNSEL**

Haviva Shane, Legal Counsel

**B. ANNOUNCEMENTS/PRESENTATIONS**

1. Next Board Meeting: Wednesday, July 10, 2019, 8:00 a.m.  
Omnitrans Metro Facility Board Room

**C. COMMUNICATIONS FROM THE PUBLIC**

Keith White<sup>1</sup> resident Eastvale, does not agree with the rear-facing wheelchair securement position onboard the bus. He stated that customers in mobility devices should be allowed to face whichever direction they feel comfortable travelling in. Mr. White mentioned his wheelchair was damaged due to the rear facing securement. He referred to Riverside Transit Agency and stated that they adhere to the proper wheelchair securement process. He asked that Omnitrans address this issue. Chairman Dailey advised Mr. White that staff would follow-up with him.

Member Hagman arrived at 8:04 a.m.

Member Valdivia arrived at 8:08 a.m.

---

<sup>1</sup> Director of Operations, Shawn Brophy met with Mr. White to discuss his comments. Following the meeting, a reminder was sent to the coach operators stating that customers with mobility devices may select which way they would like their mobility device to face as long as it is safely secured.

#### **D. POSSIBLE CONFLICT OF INTEREST ISSUES**

There were no Conflict of Interest Issues.

#### **E. CONSENT CALENDAR**

1. Approve Board Minutes – May 1, 2019
2. Receive and File Administrative & Finance Committee Minutes – April 11, 2019
3. Receive and File Management Plan Strategic Initiatives and Key Performance Indicators, Fiscal Year 2019 Third Quarter Report
4. Adopt Resolution No. 313-19, Authorizing the CEO/General Manager to Execute all Required Documents and any Amendments Required to File Funding Applications with Caltrans for the Low Carbon Transit Operation Program (LCTOP)
5. Approve the New Position of Rail Operations Analyst and Update to Policy 402
6. Amend Fiscal Year 2019 Budget and the 2015-2020 Short-Range Transit Plan to Include an Additional \$95,000 in State Transit Assistance Funds (STA)
7. Authorize Assignment – Contract HRS15-124, Insurance Broker Services: Health and Supplemental
8. Authorize Award – Contract MKP19-64, Architectural and Engineering Services, Bus Stop Improvements
9. Authorize Award – Contract MKP19-35, San Bernardino Transit Center (SBTC) Site Fence Modification Project
10. Authorize Award – Sole Source MNT19-91, Trapeze Spare Parts

M/S (McCallon/Valdivia) that approved Consent Calendar. Motion was passed unanimously by Members present.

#### **F. DISCUSSION ITEMS**

1. CEO/General Manager's Report

CEO/General Manager, P. Scott Graham, reviewed the CEO/General Manager's report and provided a brief update on the Ad Hoc Committee meeting. He stated that the Members, SBCTA, and Omnitrans staff met on May 30<sup>th</sup> and engaged in a robust discussion regarding various topics including current routes, service frequency and the budget. Mr. Graham explained that SBCTA and Omnitrans are scheduled to meet in July to discuss potential reductions in service and will bring a proposal to the Ad Hoc Committee in early September and subsequently to the Board if approved.

Chairman Dailey added to Mr. Graham's report by stating that should a consensus not be reached by the Committee in September; a consultant may be hired to look at the issues from an outside perspective.



Supervisor Gonzales arrived at 8:17 a.m.

Member Moran requested that minutes be taken for the Ad Hoc Committee meetings and distributed to the Board. Staff noted Member Moran's request.

Supervisor Gonzales stressed the importance of looking at the individual cities through their general plans and how they connect to the regional plans. She also suggested including the unincorporated areas, which will grow in the future.

The Board received and filed this report.

2. Receive and File Summary Information Regarding the March 14, 2019 Board of Directors Workshop

Insight Strategies CEO and Managing Partner, Teri Fisher, provided a presentation summarizing the March 14, 2019 Board Workshop.

The Board received and filed this report.

3. Receive and File Overview on Access ADA Paratransit Service

Director of Special Transit Services, Doug Stanley, provided a presentation on Access Paratransit Service.

Member Moran mentioned that the City of Chino Hills contracts with Pomona Valley Workshop (Anthesis) for custodial services at City Hall and encouraged other cities to look into working with them as well.

Supervisor Gonzales asked if there are any planning efforts related to the baby boomer generation. She also recommended that plans be inclusive of SB 743 mandates. Mr. Stanley provided additional information regarding programs available through the CTSA Program.

Supervisor Rutherford referred to public comments made at the last few Board Meetings regarding scheduling issues on the Access program and asked how the new software would address some of those issues. Mr. Stanley responded that the passenger would be able to view the arrival times via an electronic device. He added that in the future staff intends to pursue grants for an Interactive Voice Response (IVR) system, which allows customers to receive the vehicle arrival time by voice.

Member Dutrey left the room at 8:58 a.m. and returned at 9:00 a.m.

Member McNaboe left the room at 8:59 a.m. and returned at 9:02 a.m.

Member Valdivia left the room at 9:11 and returned at 9:14 a.m.

Member Spagnolo left the room at 9:19 a.m. and returned and 9:23 a.m.

The Board received and filed this presentation.

4. Authorize Award – Contract MNT19-50, Maintenance of the Compressed Natural Gas (CNG) Fueling Facilities at East Valley and West Valley

Contracts Manager, Eugenia Pinheiro, provided a brief background on this item as detailed in the staff report.

M/S (McCallon/Rowe) that authorized the CEO/General Manager to award Contract MNT19-50 to Clean Energy of Newport Beach, CA for the provision of the maintenance of the Compressed Natural Gas (CNG) fueling facilities at East Valley and West Valley for a three (3) year base period beginning September 1, 2019 and ending August 31, 2022, with the authority to exercise two (2) single option years ending no later than August 31, 2024, in the amount of \$1,319,004, an allowance of \$150,000, plus a ten percent contingency of \$146,900, for a total not-to-exceed amount of \$1,615,904, should all options be exercised. Motion was passed unanimously by Members present.

5. Authorize Award – Contract MNT19-78, Bus Painting and Decal Services

Chairman Dailey announced that Item F5 would be pulled from the agenda.

6. Installation of Vice Chair to the Office of Chair and Elect a new Vice Chair for a Two-Year Term, Beginning July 1, 2019 and continuing through June 30, 2021

Chairman, Ron Dailey explained the voting process for the installation of the new Board Chair and election of a new Vice Chair.

M/S (Hagman/McNaboe) that installed Vice Chair David Avila, Yucaipa, to the office of Chair of the Omnitrans Board of Directors, for a two-year term, beginning July 1, 2019 and continuing through June 30, 2021. Voice vote was taken and the motion was passed unanimously by Members present.

Chairman Dailey opened nominations for the Vice Chair position and nominated Member Lilburn on behalf of Vice Chair Avila.

Member Wapner nominated Member Dutrey. Member Dutrey accepted the nomination.

No further nominations were made, Chairman Dailey called for a motion to close the nominations.

M/S (Hagman/McNaboe) that closed the nominations. Motion was approved unanimously by the Members present.

Chairman Dailey called on the Clerk of the Board to take a roll call vote to elect a new Vice Chair to the Omnitrans Board of Directors, for a two-year term, beginning on July 1, 2019 and continuing through June 30, 2021. Member Dutrey was selected by majority vote.

Chairman Dailey voted for Member Lilburn.

Member McCallon abstained.

The remainder of the Members present voted, by roll call, for Member Dutrey.

#### **G. PUBLIC HEARING**

1. Call for Public Hearing – Federal Transit Administration Section 5307, 5310 and Section 5339 Funds

Director of Finance, Don Walker, presented a brief background on the item as detailed in the staff report.

Members Navarro and McNaboe left the meeting at 9:32 a.m.

#### **H. BOARD BUSINESS**

1. Review the Amended and Restated Employment Agreement for P. Scott Graham, Chief Executive Office/ General Manager, effective February 5, 2019

The Board adjourned into Closed Session at 9:34 a.m.

The Board reconvened at 9:55 a.m. with no reportable action.

#### **I. REMARKS AND ANNOUNCEMENTS**

There were no remarks or announcements.

#### **J. ADJOURNMENT**

The Board adjourned 9:55 a.m. The next regular meeting is scheduled Wednesday, July 10, 2019, at 8:00 a.m., with location posted on the Omnitrans website and at Omnitrans' San Bernardino Metro Facility.

Prepared by:

---

Araceli Barajas, Sr. Executive Assistant to the CEO  
Clerk of the Board

ITEM # E2

**ADMINISTRATIVE & FINANCE COMMITTEE  
MINUTES, MAY 9, 2019**

**A. CALL TO ORDER**

Committee Chair Sam Spagnolo called the regular meeting of the Administrative and Finance Committee to order at 8:00 a.m., Thursday, May 9, 2019.

1. Pledge of Allegiance
2. Roll Call

**Committee Members Present**

Council Member Sam Spagnolo, City of Rancho Cucamonga – Committee Chair  
Mayor Pro Tem David Avila, City of Yucaipa  
Council Member Ron Dailey, City of Loma Linda  
Council Member Alan Wapner, City of Ontario  
Supervisor Curt Hagman, County of San Bernardino

**Committee Members Not Present**

Council Member John Roberts, City of Fontana

**Omnitrans Administrative Staff Present**

Erin Rogers, Deputy General Manager  
Trischelle Baysden, Director of Rail  
Shawn Brophy, Director of Operations  
Jeremiah Bryant, Director of Strategic Development  
Jacob Harms, Director of Information Technology  
Suzanne Pfeiffer, Director of Human Resources  
Connie Raya, Director of Maintenance  
Doug Stanley, Director Special Transportation Services  
Omar Bryant, Maintenance Manager  
Adrienne Fernandez, Executive Staff Assistant  
Maurice Mansion, Treasury Manager  
Harry Morck, Network Administrator  
Eugenia Pinheiro, Contracts Manager  
Krystal Turner, Contracts Administrator  
Christine Van Matre, Contracts Administrator

**B. ANNOUNCEMENTS/PRESENTATIONS**

The next Committee Meeting is scheduled Thursday, June 13, 2019, at 8:00 a.m.

**C. COMMUNICATIONS FROM THE PUBLIC**

There were no communications from the public.

**D. POSSIBLE CONFLICT OF INTEREST ISSUES**

There were no Conflict of Interest Issues.

**E. DISCUSSION ITEMS**

1. Approve Administrative & Finance Committee Minutes April 11, 2019

M/S (Dailey/Avila) that approved the Committee Minutes of April 11, 2019. Motion was passed unanimously by Members present.

Supervisor Hagman arrived at 8:02 a.m. after the vote on Item #E1.

2. Receive and Forward to the Board of Directors the Management Plan Strategic Initiatives and Key Performance Indicators, Fiscal Year 2019 Third Quarter Reports

Deputy General Manager, Erin Rogers, reviewed the Strategic Initiatives and Key Performance Indicators FY19 Third Quarter Reports.

A discussion ensued regarding Initiative #4, Financial Sustainability & Operational Cost Efficiencies, Strategic Action 2, Develop a strategy and identify partners to begin implementation of solar energy and stored energy solutions.

Member Hagman had some questions regarding the procurement process related to the project and asked if Southern California Edison (SCE) would be the contractor. Ms. Rogers provided additional information regarding SCE's role in the project and noted that STV, the Agency's Architectural & Engineering firm would be involved with the design portion. She stated that the Committee would be kept abreast on the developments in future reports.

Member Dailey referred to Initiative #5, Workforce Stability, Strategic Action 3, Evaluate operational processes that impact Coach Operator overtime and improve personnel utilization, and acknowledged staff's effort noting the 50% reduction in Coach Operator overtime.

Member Hagman referred to the Key Performance Indicators, Section 2, Service Performance and expressed some concern regarding the declining ridership. He stressed the importance of being proactive in gathering data, noting that data from the customers is especially valuable.

A brief discussion ensued regarding the impact of gas prices and the economy on the decline in ridership.

Member Dailey agreed with Member Hagman regarding the importance of collecting data to better assist with forecasting and service planning efforts.

The Committee received and forwarded item to the Board of Directors.

3. Recommend to the Board of Directors Approve the New Position of Rail Operations Analyst and Update to Policy 402.

Director of Human Resources, Suzanne Pfeiffer, presented a brief background on this item as detailed in the staff report.

M/S (Hagman/Dailey) recommended the Board of Directors Approve the New Position of Rail Operations Analyst and Update to Policy 402. Motion was passed unanimously by Members present.

4. Recommend the Board of Directors Authorize the CEO/General Manager to Award Contract MKP19-64, Architectural and Engineering Services, Bus Stop Improvements.

Contracts Manager, Eugenia Pinheiro, presented a brief background on this item as detailed in the staff report.

Member Dailey expressed some concern with the two-year time frame to complete the improvements. Ms. Pinheiro responded that the project was expected to be completed sooner, however, additional time was allotted in case of any extenuating circumstances.

Member Spagnolo was pleased to see this contract awarded to a business located in the City of San Bernardino.

M/S (Hagman/Dailey) that recommended the Board of Directors authorize the CEO/General Manager to award Contract MKP19-64 to Hernandez, Kroone & Associates of San Bernardino, CA, for the provision of Architectural and Engineering (A&E) Services– Bus Stop Improvements beginning May 13, 2019 and ending no later than May 12, 2021 in the amount of \$161,902, an allowance in the amount of \$30,000, plus a ten percent contingency of \$19,190, for a total not-to-exceed amount of \$211,092. Motion was passed unanimously by Members present.

## **F. ADJOURNMENT**

The Administrative and Finance Committee meeting adjourned at 8:35 a.m.

The next Administrative and Finance Committee Meeting is scheduled Thursday, June 13, 2019, at 8:00 a.m., with location posted on the Omnitrans website and at Omnitrans' San Bernardino Metro Facility.

Prepared by:

---

Araceli Barajas, Sr. Executive Asst. to the CEO  
Clerk of the Board

ITEM # E3

**DATE:** July 10, 2019

**TO:** Board Chair David Avila and Members of the Omnitrans Board of Directors

**FROM:** P. Scott Graham, CEO/General Manager

**SUBJECT: ADOPT RESOLUTION NO. 314-19 APPROVING AMENDMENT TO CALIFORNIA TRANSIT SYSTEMS JOINT POWERS AUTHORITY (CALTIP) AGREEMENT**

### **FORM MOTION**

Adopt Resolution No. 314-19 approving the amended Joint Powers Agreement forming the California Transit Systems (CalTIP) Joint Powers Authority and authorize the CEO/General Manager to sign the amended Agreement.

### **BACKGROUND**

Omnitrans joined California Transit Systems Joint Powers Authority (CalTIP) in 1993 to obtain liability coverage (vehicle physical damage coverage) and risk management services through jointly pooling resources with the other transit agencies that are members of the Authority. CalTIP has provided competitive rates and needed risk management services over the years. As with many other self-insurance pools, CalTIP was formed in 1987 during a difficult time for public entities to obtain coverage from the insurance market. Although the difficulty of obtaining insurance from the standard markets eventually waned, the coverage provided by the insurance industry usually was not tailored to the specific needs of the public entities and did not provide the tailored risk management services.

CalTIP was formed with the signing of a joint powers agreement by each of its members. The Agreement was drafted in 1987 and was last amended in May 2011 to align the document with current operations and practices of the Authority at that time. The document has not been updated since then.

The current amendments to the Agreement are the result of the discussions with CalTIP's Oversight Committee and Board of Directors to address CalTIP's ongoing challenges associated with achieving certain quorum requirements at Board of Directors meetings in order to conduct business and to ensure the governing documents align with CalTIP's current practices and procedures.

CalTIP's draft Agreement and Bylaws with changes shown in the redline version were distributed to all CalTIP members on April 3, 2019, providing time to review the changes, provide comments, and seek clarifications.

At its April 18<sup>th</sup> meeting, the CalTIP Board approved submitting the amended Joint Powers Authority Agreement to the Parties for approval. In addition, the CalTIP Board approved the Bylaws as amended to become effective upon approval of the Agreement. While the CalTIP Board has the authority to approve the amendments to the CalTIP Bylaws, because the Agreement makes reference to that document, it has been included for informational purposes.

## **CONCLUSION**

Staff recommends that the Board of Directors Adopt Resolution No. 314-19 approving the amended Joint Powers Agreement forming the California Transit Systems (CalTIP) Joint Powers Authority and authorize the CEO/General Manager to sign the amended Agreement.

PSG: AB

Attachments    A: Resolution No. 314-19  
                      B. Amended CalTIP Joint Powers Agreement – 2019  
                      C. Amended CalTIP Bylaws – 2019  
                      D. Comparison of Amended Joint Powers Agreement to Current Agreement



**RESOLUTION NO. 314-19**

**A RESOLUTION OF THE OMNITRANS BOARD OF DIRECTORS, APPROVING THE AMENDED JOINT POWERS AUTHORITY AGREEMENT FORMING THE CALIFORNIA TRANSIT SYSTEMS JOINT POWERS AUTHORITY**

WHEREAS, on August 06, 2003, by its Resolution No. 194-03 the Board of Directors approved entering into an agreement that provided for the creation of the California Transit Systems Joint Powers Authority (hereinafter CalTIP) for the purpose of jointly funding tort liabilities and other losses and providing risk management services to reduce such losses;

WHEREAS, CalTIP has provided Omnitrans coverage for such liabilities (including losses to vehicles) at overall cost-effective pricing;

WHEREAS, the Board of Directors of Omnitrans finds it is in the best interest of Omnitrans to continue its participation in CalTIP and obtain liability coverage and risk management services from CalTIP;

WHEREAS, the joint powers authority agreement of CalTIP has retained its original form as drafted in 1987 and amended in 2011 and there have been changes in operations of CalTIP since that time;

WHEREAS, the Board of Directors recognizes the need to amend the CalTIP joint powers authority agreement to enable CalTIP to effectively govern the organization and adapt to changes in the environment in which CalTIP operates.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of OMNITRANS accepts the changes to the joint powers authority agreement as presented, and

BE IT FURTHER RESOLVED that the Board of Directors authorizes the CEO/General Manager to sign the amended joint powers authority agreement that shall enable Omnitrans to continue to enjoy the joint self-insurance and risk management programs provided by CalTIP.

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Omnitrans Board of Directors, at their regular meeting held on the 10<sup>th</sup> day of July 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

---

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

The foregoing resolution is hereby approved this 10<sup>th</sup> day of July 2019.

---

David Avila  
Board Chair, Omnitrans Board of Directors

Approved as to form:

---

Haviva Shane  
Counsel for Omnitrans

**CALIFORNIA TRANSIT SYSTEMS**

**JOINT POWERS AUTHORITY**

**AMENDED AND RESTATED**  
**JOINT POWERS AUTHORITY AGREEMENT**

**As Amended 2019**

## TABLE OF CONTENTS

### AMENDED AND RESTATED JOINT POWERS AUTHORITY AGREEMENT

#### CALIFORNIA TRANSIT SYSTEMS JOINT POWERS AUTHORITY (CalTIP)

ARTICLE I - PURPOSE .....	1
ARTICLE II - CREATION OF THE CALIFORNIA TRANSIT SYSTEMS JOINT POWERS AUTHORITY .....	2
ARTICLE III - DEFINITIONS.....	2
ARTICLE IV - PARTIES TO THIS AGREEMENT.....	2
ARTICLE V - TERM OF AGREEMENT.....	2
ARTICLE VI - POWERS OF THE AUTHORITY .....	3
ARTICLE VII - GOVERNING DOCUMENTS.....	3
ARTICLE VIII - RESPONSIBILITIES OF THE PARTIES.....	3
ARTICLE IX - POWERS RESERVED UNTO THE PARTIES .....	4
ARTICLE X - BOARD OF DIRECTORS .....	4
ARTICLE XI - DUTIES OF THE BOARD NOT DELEGABLE.....	4
ARTICLE XII - BOARD MEETINGS AND RECORDS .....	4
ARTICLE XIII - OFFICERS OF THE AUTHORITY .....	5
ARTICLE XIV - ANNUAL BUDGET.....	5
ARTICLE XV - ADMINISTRATION OF FUNDS .....	5
ARTICLE XVI - NEW PARTIES.....	5
ARTICLE XVII - WITHDRAWAL.....	5
ARTICLE XVIII - EXPULSION.....	6
ARTICLE XIX - EFFECT OF EXPULSION OR WITHDRAWAL .....	6
ARTICLE XX - TERMINATION AND DISTRIBUTION .....	6
ARTICLE XXI - LIABILITY AND INDEMNIFICATION .....	6
ARTICLE XXII - NOTICES .....	7
ARTICLE XXIII - PROHIBITION AGAINST ASSIGNMENT .....	7
ARTICLE XXIV - ARBITRATION.....	7
ARTICLE XXV - AMENDMENTS.....	7
ARTICLE XXVI - AGREEMENT COMPLETE.....	8

This Amended and Restated Joint Powers Agreement (“Agreement”) is executed by and among those public entities which are signatories to this Agreement. Such parties shall hereinafter be referred to individually as “Party” or collectively, “Parties.”

#### **RECITALS**

**Whereas**, Article 1, Chapter 5, Division 7, Title 1 of the California Government Code (Section 6500 et seq.) permits two or more public entities, by agreement, to exercise jointly powers common to the contracting parties; and

**Whereas**, it is the mutual benefit of the Parties and in the public interest that the Parties join together to provide:

- Pooling of their self-insured losses caused by injury to, or disease of, a person or damage to property;
- Sharing the cost of excess insurance or reinsurance, if any, or pooling with other joint powers authorities or public entity pooling arrangement; and
- Sharing the administration of the Authority created by this document.

**Whereas**, each Party desires to enter into this Agreement with each of the other Parties for the purpose of joint risk sharing and/or insuring against various risk of loss jointly, rather than individually;

**NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

#### **AGREEMENT**

This amended Agreement replaces and restates in its entirety the Agreement and any prior amendments that may exist and is effective upon approval by three-quarters of the current Parties to the Agreement.

This Agreement is made under the authority of Government Code Section 6500 et seq. between the undersigned public entities, after the governing boards of the entities determine that it is in their best interest to execute this Agreement.

#### **ARTICLE I - PURPOSE**

The purpose of this Agreement is to exercise jointly powers common to each Party by:

- Creating an authority under Government Code Section 6500 et seq., a public entity that is separate and apart from the Parties, to be known as the California Transit System Joint Powers Authority, to administer a self-insurance pool,
- Sharing losses and purchase as a group, insurance or reinsurance and participate in other joint powers authorities or other public entity pooling arrangements,
- Maintaining funds sufficient to pay the losses to which the Parties agree to share through a Coverage Program, and
- Purchasing jointly administrative and other services, including risk management, loss prevention, and legal defense in connection with the Coverage Programs.

## **ARTICLE II - CREATION OF THE CALIFORNIA TRANSIT SYSTEMS JOINT POWERS AUTHORITY**

Pursuant to Government Code Section 6500 et seq., the Parties to this Agreement hereby create a public entity separate and apart from the Parties. This public entity created by this Agreement shall be known as the California Transit Systems Joint Powers Authority.

## **ARTICLE III - DEFINITIONS**

1. "Authority" shall mean the California Transit Systems Joint Powers Authority.
2. "Board" or "Board of Directors" shall mean the governing board of the Authority.
3. "Coverage Programs" shall mean programs as defined and adopted by the Board which may, but need not be limited to pooled risk programs, group purchase of insurance or reinsurance, or participation in other public entity pooling programs.
4. "Coverage Program Documents" shall mean the Master Program Document defining the policies and procedures of the program and the Memorandum of Coverage defining the coverage provided by the program.
5. "Contributions" shall mean payments by Members to the Authority, for other than interest, penalties paid, or reimbursements for payments made on behalf of the Member, for which the Authority is not liable.
6. "Governing Documents" shall be those documents described in Article VII, Governing Documents.
7. "Member" or collectively "Members" shall mean a Party who is participating in a particular Coverage Program.
8. "Party" shall mean a signatory to this Agreement.
9. "Officer" shall mean an officer of the Authority as defined in Article XIII.

## **ARTICLE IV - PARTIES TO THIS AGREEMENT**

Each Party to this Agreement certifies that it intends to, and does, contract with all other Parties who are signatories to this Agreement, and any signatories that may sign this Agreement in the future, pursuant to Article XVI. The withdrawal of any Party to this Agreement shall not affect this Agreement as respects the remaining Parties and those remaining Parties' intent to be bound by this Agreement.

## **ARTICLE V - TERM OF AGREEMENT**

As authorized by Government Code Section 6510, this Agreement which was originally effective May 1, 1987 shall stay in full force, as amended from time to time, until terminated in accordance with Article XX.

## **ARTICLE VI - POWERS OF THE AUTHORITY**

The powers of the Authority shall be the powers enjoyed by the County of Nevada or, if the County of Nevada is no longer a Party to this Agreement then, the County of Siskiyou, and is authorized to do all acts necessary to fulfill the purposes of this Agreement including, but not limited to, the following:

1. Make and enter into contracts;
2. Incur debts, liabilities and obligations, but no debt, liability or obligation of the Authority is the debt, liability or obligation of any Party except as otherwise provided;
3. Acquire, hold or dispose of real and personal property;
4. Receive contributions and donations of property, funds, services and other forms of assistance from any source;
5. Assess Parties as deemed appropriate by the Board;
6. Sue and be sued in its own name;
7. Acquire, construct, manage and maintain buildings; and
8. Lease real or personal property including property of a Party, and receive, collect, invest and disburse monies.

These powers shall be executed in a manner provided by appropriate law and as set forth in this Agreement.

## **ARTICLE VII - GOVERNING DOCUMENTS**

The attached amended Bylaws shall be deemed adopted upon the effective date of this Agreement. Thereafter, the Board of Directors may amend the Bylaws consistent with this Agreement and applicable law to govern the operations of the Authority. The Board of Directors may adopt Coverage Program Documents, consistent with this Agreement and the Bylaws. These Coverage Program Documents define the Coverage Programs, the Members' rights and duties, the Authority's rights and duties, and the operations of the programs. The Board may also adopt policies and procedures, consistent with this Agreement, the Bylaws, or Coverage Program Documents, to assist in the governance of the Authority's operations and activities. The Agreement, the Bylaws, Coverage Program Documents and policies and procedures adopted by the Board shall constitute the Governing Documents of the Authority.

Unless otherwise stated, a Governing Document may be amended by a majority of the Board of Directors at a duly noticed regular or special Board meeting.

## **ARTICLE VIII - RESPONSIBILITIES OF THE PARTIES**

The Parties to this Agreement shall have the following responsibilities:

1. To abide by the terms of this Agreement and other Governing Documents;
2. To cooperate fully with the Authority in the settlement of claims;
3. To pay Contributions, assessments, or other charges promptly to the Authority when due; and
4. To appoint a Director and one or more Alternates to the Board of Directors and to reappoint those positions upon the departure of anyone from those positions.

## **ARTICLE IX - POWERS RESERVED UNTO THE PARTIES**

The Parties reserve unto themselves the following powers:

1. To amend this Agreement;
2. Appoint the Representatives and Alternates to the Board of Directors; and
3. To terminate the Authority in accordance with Article XX.

## **ARTICLE X - BOARD OF DIRECTORS**

There shall be a Board of Directors to govern the affairs of the Authority. The Board of Directors shall have all the powers of the Authority except those specifically reserved to the Parties. The Board of Directors shall have the authority to create committees as deemed necessary for the operations of the Authority. The Board has the power to delegate any and all of its powers, not specifically reserved exclusively to the Board, to a committee or an Officer of the Authority.

The Board of Directors shall consist of one Director and one or more Alternates for each Party to this Agreement as provided for in the Bylaws.

## **ARTICLE XI - DUTIES OF THE BOARD NOT DELEGABLE**

The Board may not delegate to any committee, office or person the authority to:

1. Adopt, amend or alter the Bylaws;
2. Adopt the Authority's Annual Budget;
3. Create a Coverage Program;
4. Accept a Party to this Agreement; or
5. Expel a Party to this Agreement.

## **ARTICLE XII - BOARD MEETINGS AND RECORDS**

The Board of Directors shall hold at least one meeting each fiscal year. Regular and special meetings may be called in accordance with the Bylaws of this Authority and applicable laws. All meetings shall be open to the public except as permitted by Government Code Section 54950 et seq. The Secretary shall keep full and complete minutes of all Board meetings.



### **ARTICLE XIII - OFFICERS OF THE AUTHORITY**

The Board shall elect one of its members as Chairperson and one as Vice Chairperson. The Board shall appoint a Secretary. The duties of the Chairperson, Vice Chairperson and Secretary shall be defined in the Bylaws.

In lieu of the designation of a treasurer and auditor as per Government Code Section 6505.6, the Board shall elect a Treasurer, who shall have, among other duties defined in the Bylaws, the duties of the treasurer and auditor as described in Government Code Section 6505.5.

The Board may appoint other officers of the Authority as described in the Bylaws.

### **ARTICLE XIV - ANNUAL BUDGET**

Pursuant to Government Code Section 6508, the Board shall approve a budget for any given fiscal year prior to the inception of that year.

### **ARTICLE XV - ADMINISTRATION OF FUNDS**

The Authority shall be responsible for the strict accountability of all funds and reports of all receipts and disbursements in conformity with Government Code Section 6505. All funds of the Authority may be held in common although there shall be a separate accounting for funds of each Coverage Program.

### **ARTICLE XVI - NEW PARTIES**

Prospective Parties may apply to the Board of Directors at any time. The Board shall have the power to accept a prospective Party, after reviewing their application. The membership shall become effective upon the Board's approval and the signing of this Agreement, participation in all mandatory Coverage Programs, and compliance with any and all other requirements imposed upon membership by the Bylaws or other Governing Documents.

### **ARTICLE XVII - WITHDRAWAL**

A Party to this Agreement may not withdraw as a party to this Agreement prior to being a Party for at least three full fiscal years. A Party, who has been a Party for at least three full fiscal years, may withdraw from this Agreement only on the completion of a fiscal year. The Party must provide the Chairperson written notice of intent to withdraw at least six-months prior to withdrawal. The Party may rescind its notice of intent to withdraw at any time prior to ninety-days prior to the commencement of the next fiscal year. The Board may authorize rescission of the intent to withdraw upon a Party's request pursuant to the Bylaws at any time.

## **ARTICLE XVIII - EXPULSION**

The Board may expel a Party to this Agreement as a Party as provided for in the Bylaws. The expelled Party shall be given written notice of such action of the Board at least ninety-days prior to the effective date of the expulsion.

## **ARTICLE XIX - EFFECT OF EXPULSION OR WITHDRAWAL**

Pursuant to Government Code Section 6512.2, termination of any Party to this Agreement as a Party shall not be construed to be completion of the purpose of the Agreement and shall not require the return of any Contributions, payments or advances made by the Party until the Agreement is rescinded or terminated by all Parties in accordance with Article XX.

Termination of a Party to this Agreement as a Party shall not terminate its continuing responsibilities defined in any Governing Document or Coverage Program Document for the period of time in which the Party participated, including, but not limited to:

1. Cooperate fully with the Authority in the investigation and settlement of a claim;
2. Pay any Contributions, retentions or deductibles, assessments or other charges which are due and payable; and
3. Provide any statistical or loss experience data and other information as may be necessary for the Authority to carry out the purpose of this Agreement.

## **ARTICLE XX - TERMINATION AND DISTRIBUTION**

This Agreement may be terminated at any time with written consent of three-fourths of the Parties; provided, however, that this Agreement and the Authority shall exist for the purpose of disposing of all claims, distribution of assets and any other functions necessary to wind up the affairs of the Authority. The Board shall be vested with all the powers of the Authority for the purposes of winding down and dissolving the business affairs of the Authority, including the power to assess past and present Parties in accordance with Coverage Program Documents.

In accordance with Government Code Section 6512, all assets of the Authority shall be distributed among those who were Parties within ten years of termination, in proportion to the Parties' Contributions. The Board shall determine when claims and liabilities are sufficiently realized as to not jeopardize the payment of any claim or liability that may arise in the future.

## **ARTICLE XXI - LIABILITY AND INDEMNIFICATION**

Pursuant to Government Code Section 6508.1, the debts, liabilities and obligations of the Authority shall not constitute debts, liabilities or obligations of any Party, except to the extent and in the proportions, imposed by the Bylaws or other Governing Documents. Each Party is independent of every other Party and of the Authority and not the agent of any Party or of the Authority. In contemplation of the provisions of Section 895.2 of the California Government Code, imposing certain tort liability jointly

upon public entities, solely by reason of a joint powers agreement as defined in Section 895 of that code, each Party, as between each other, pursuant to the authorization contained in Section 895.4 and 895.6 of that code, does hereby assume the full liability imposed upon it, or any of its officers, agents, or employees by law for injury caused by a negligent or wrongful act or omission occurring in the performance of this Agreement, to the same extent that such liability would be imposed in the absence of Section 895.2 of the California Government Code. To achieve the above-stated purpose, each Party shall indemnify and hold harmless each other Party for any loss, costs, or expense that may be imposed upon such other Party solely by virtue of Section 895.2. The provisions of Section 2778 of the California Civil Code are made a part of this Agreement as if set forth fully in this Agreement.

The members of the Board of Directors and the Officers and employees of the Authority shall act in good faith and in the best interests of the Authority in the performance of their duties. The members of the Board of Directors and Officers and employees shall be liable for an act or omission within the scope of their employment with the Authority as a public entity only in the event that they act or fail to act because of actual fraud, corruption, or malice. No member shall be liable for any actions taken or omissions by another member of the Board. Funds of the Authority shall be used to defend and indemnify members of the Board, Officers, and employees for any act or omission pursuant to the provisions of the Government Code Section 910 to 996.6, inclusive. The Authority may purchase insurance covering acts or omissions of the Board of Directors, Officers, and employees.

#### **ARTICLE XXII - NOTICES**

Notices to any or all Parties shall be sufficient if mailed to their respective addresses on file with the Authority. Notice to the Authority shall be sufficient if mailed to the official address of the Authority as established by Resolution. Notices of meetings may be given by electronic mail to the respective electronic mail addresses on file with the Authority, which notice shall be deemed sufficient notice.

#### **ARTICLE XXIII - PROHIBITION AGAINST ASSIGNMENT**

No Party may assign any right, claim, or interest it may have under this Agreement, and no creditor, assignee, or third party beneficiary of the Party shall have any right, claim or title to any part, share, interest, fund, premium, or asset of the Authority.

#### **ARTICLE XXIV - ARBITRATION**

Any controversy between the Parties hereto arising out of this Agreement shall be submitted to arbitration, and such arbitration shall comply with and be governed by the provisions of the California Arbitration Act, Sections 1280 through 1294.2 of the California Code of Civil Procedure.

#### **ARTICLE XXV - AMENDMENTS**

This Agreement may be amended at any time by approval of two-thirds of the Parties.

**ARTICLE XXVI - AGREEMENT COMPLETE**

The foregoing constitutes the full and complete agreement of the Parties. There are no oral understandings or agreements not set forth in writing herein.

In Witness Whereof, the undersigned Party hereto has executed this Agreement on the date indicated below:

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

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

Printed Name of Authorized Signor

\_\_\_\_\_  
Signature of Authorized Signor

\_\_\_\_\_  
Title of Authorized Signor

\_\_\_\_\_  
Name of Agency

**CALIFORNIA TRANSIT SYSTEMS**

**JOINT POWERS AUTHORITY**

**BYLAWS**

Effective – 2019

**TABLE OF CONTENTS**  
**BYLAWS**  
**CALIFORNIA TRANSIT SYSTEMS JOINT POWERS AUTHORITY**

ARTICLE I - DEFINITIONS .....	1
ARTICLE II - OFFICES.....	1
ARTICLE III - BOARD OF DIRECTORS .....	1
ARTICLE IV - ELECTION AND DUTIES OF THE OFFICERS .....	2
ARTICLE V - OVERSIGHT COMMITTEE.....	3
ARTICLE VI - ADDITIONAL COMMITTEES.....	4
ARTICLE VII - FISCAL YEAR .....	5
ARTICLE VIII - BUDGET .....	6
ARTICLE IX - RECEIPT AND DISBURSEMENT OF FUNDS .....	6
ARTICLE X - PARTY'S RESPONSIBILITIES .....	6
ARTICLE XI - COVERAGE PROGRAMS .....	6
ARTICLE XII - PENALTY FOR MONEY IN ARREARS .....	7
ARTICLE XIII - RIGHT OF OFFSET .....	7
ARTICLE XIV - NEW PARTIES TO THE AGREEMENT .....	7
ARTICLE XV - HIERARCHY OF GOVERNING DOCUMENTS.....	7
ARTICLE XVI - AMENDMENTS.....	7
APPENDIX A - PRINCIPAL EXECUTIVE OFFICE .....	8

## **BYLAWS**

For the regulation of the California Transit Systems Joint Powers Authority, except as otherwise provided by statute or the Joint Powers Agreement creating the California Transit Systems Joint Powers Authority, also known as the California Transit Indemnity Pool ("CalTIP").

### **ARTICLE I - DEFINITIONS**

The terms in these Bylaws have the same definitions as those given in the Joint Powers Agreement Creating the California Transit Systems Joint Powers Authority, unless otherwise specified herein.

- A. "Master Program Document" is a document issued by the Authority specifying the rights and obligations of the Authority and the Members in the Coverage Program as well as the procedures and operations of the program.
- B. "Memorandum of Coverage" is the document issued by the Authority to the Members in a Coverage Program, specifying the type, term, and amount of coverage provided by the Authority.

### **ARTICLE II - OFFICES**

The principal executive office for the transaction of business of the Authority is hereby fixed and located at the address shown in Appendix A. Notwithstanding Article XVI, the Board shall have the authority to change the location of the principal executive office from time to time by a simple majority vote of the Board of Directors present at a duly authorized meeting and with 30 days' prior notice of such change. A revised Appendix A will be distributed to all then current Parties to the Agreement. Other business offices may at any time be established by the Board at any place or places.

### **ARTICLE III - BOARD OF DIRECTORS**

#### **A. GOVERNING BOARD**

In accordance with Article X of the Agreement, the Board of Directors shall be the governing body of the Authority. Each Party's governing board shall appoint, by resolution, an officer or employee of the Party to be the Director and one or more officers or employees of the Party to act as Alternate on the Board of Directors of the Authority. Such appointment shall not take effect until such resolution is received by the Authority at its executive office as defined in Article II above, and the appointees have complied with the Authority's Conflict of Interest Policy. Voting members of the Board of Directors shall be the Directors, or in the case of their absence, an Alternate. Alternates shall have all the same rights to hold office or sit on committees as a Director. No more than one alternate may exercise a Party's voting rights at a meeting.

The Board of Directors shall provide policy direction to the committees, the Officers, and any employees or contracted service providers of the Authority. The Board may delegate any and all powers except those specifically reserved onto the Board or specifically requiring a vote by the Board of Directors. The Board cannot delegate the following powers:

- 1. By a three-fourths vote of the Directors present and voting:
  - a. Expel an existing member from the Authority.

2. By a two-thirds vote of the Directors present and voting:
  - a. Accept a new Party to this Agreement.
3. By a majority vote of the Directors present and voting:
  - a. Amend these Bylaws pursuant to Article XVI of these Bylaws;
  - b. Create or terminate any self-insurance, group purchase insurance program, or Coverage program;
  - c. Remove an officer of the Authority or committee member;
  - d. Adopt an operating budget for each of the Authority's fiscal years;
  - e. Authorize a payment of a dividend, or charge an assessment under a retrospective adjustment;
  - f. Change the location of the principal executive office; or
  - g. Authorize a cash assessment.

## **B. MEETINGS**

All regular and special meetings of the Board of Directors shall be conducted in accordance with the Ralph M. Brown Act (Government Code Section 54950) as it now exists or may be amended from time to time. The Secretary shall cause notice to be given of all meetings and cause minutes to be prepared and distributed to the Board of Directors. The Board of Directors cannot conduct business unless a quorum is present at the meeting. A quorum consists of a majority of the Directors, or in the absence of a Director, the Alternate, that have complied with the requirements of Article III, A, and vacancies shall not be counted in determining a quorum. An official set of minutes of all Board meetings shall be kept at the principal executive offices of the Authority as defined in Article II.

All matters duly noticed and within the purview of the Board of Directors may be decided by a simple majority of those Directors voting at a regular or special meeting, unless the Governing Documents prescribe otherwise. Where the matter before the Board affects a particular Coverage Program, other than the financing of the Program, only those Directors representing Parties participating in the Coverage Program may vote; provided, however, that in the absence of a quorum of Coverage Program participant representatives the vote shall be by the Board of Directors.

The Board shall have at least one regular meeting a fiscal year. The date and time of such meeting and all other regular meetings of the Board for the next fiscal year shall be established by resolution of the Board adopted at the last regular Board meeting of the then current fiscal year.

Pursuant to Government Code Section 54956, a special meeting of the Board of Directors may be called by the Oversight Committee or by the Chairperson, with 24 hours' notice, stating the time and place of such meeting and the matter to be discussed. Such notice may be delivered personally, by way of electronic transmission (other than voice communication) or by mail. Notice by mail must be received at least 24 hours prior to the meeting.

All meetings may be postponed or cancelled by the Chairperson with at least 24 hours' prior notice.

## **ARTICLE IV - ELECTION AND DUTIES OF THE OFFICERS**

### **A. ELECTION OF THE OFFICERS**

The Officers of the Board of Directors shall be the Chairperson, Vice Chairperson, Treasurer, and



Secretary. The Officers shall be elected in the following manner:

1. Each Director may place any member of the Oversight Committee in nomination for the offices of Chairperson and Vice Chairperson. Each Director may place any member of the Board in nomination for the office of Treasurer.
2. Each Director shall cast one vote for the candidate of his or her choice for each office.
3. The terms of office of the Chairperson, the Vice Chairperson, and Treasurer shall be two years, commencing during the even numbered years. The Officers will begin serving terms upon the beginning of the fiscal year immediately following the election. The terms as Officers will end on the last day of a fiscal year. No officer may serve more than three consecutive terms in the same office. An exception may be made for the Treasurer's office if there are no other qualified Directors to serve.
4. Elections will be held whenever there is an Officer vacancy to fill the unexpired term.
5. The Office of the Secretary of the Board of Directors shall be the General Manager unless a separate Secretary of the Board of Directors is appointed by the Board of Directors.
6. The Office of Secretary has no set term but continues until there is a new General Manager or the Board appoints another as Secretary.

## **B. DUTIES OF THE OFFICERS**

The duties of the Chairperson shall be to preside at all meetings of the Board and to perform such other duties as the Board may specify. Upon the death, incapacity, or vacancy in the office of the Chairperson, the Vice Chairperson shall succeed to such office automatically, subject to ratification by the Board at its next meeting, at which time the Board shall also elect a new Vice Chairperson.

The duties of the Vice Chairperson shall be to act as the Chairperson in the absence of the Chairperson and to perform such other duties as the Board may specify.

The duties of the Treasurer shall be those specified in the Agreement, duties imposed on the Treasurer and Controller/Auditor as defined in Section 6505.5 and 6506 of the California Government Code and other duties as required by law or as specified by the Board. The Authority, at its own expense, shall maintain a bond covering the Treasurer and any other person having contact with funds of the Authority in an amount not less than \$250,000.

The duties of the Secretary shall be to cause minutes to be kept and to perform such other duties as the Board may specify.

## **ARTICLE V - OVERSIGHT COMMITTEE**

There shall be an Oversight Committee consisting of not less than seven nor more than nine members from the Board of Directors. The Board of Directors shall elect each member to a term of two-years concurrent with the fiscal year of the Authority, and commencing during the even numbered years. The Board of Directors shall determine the number of members to serve for the following two years at the time of each election. The elected members will begin serving terms upon the beginning of the fiscal year immediately following the election. The terms as elected members will end on the last day of a fiscal year. There is no maximum number of terms a member can serve. A vacancy shall be filled by an election by the Board of Directors at its next meeting.

The Board Chairperson shall be the Chair of the Oversight Committee. The Board Vice Chairperson shall be the Vice Chair of the Oversight Committee.

The Oversight Committee shall have the full authority of the Board of Directors except that authority for which the Board is precluded from delegating. The Oversight Committee shall review disputes between a Party and the Authority, and make a determination of appropriate action, regarding coverage or the administration of the Authority, enter into contracts where such authority has not been delegated to another, contract for a financial audit and for general legal services. The Oversight Committee shall monitor the performance and the operations of the Authority and Board policy and make recommendations of change where the Committee deems appropriate.

A majority of the members of the Oversight Committee shall constitute a quorum. An action by the Oversight Committee shall require a majority vote of those in attendance. Vacancies shall not be counted in determining a quorum.

## **ARTICLE VI - ADDITIONAL COMMITTEES**

In addition to the Oversight Committee, there shall be a Member Services Committee and a Finance and Administration Committee.

### **A. MEMBER SERVICES COMMITTEE**

The Member Services Committee shall consist of not less than five nor more than nine members of the Board of Directors, at the discretion of the Oversight Committee. The members are to be elected by the Oversight Committee. The terms of office shall be two years, with half the elected positions incepting on fiscal years starting on even numbered years and half the elected positions incepting on fiscal years starting on odd numbered years, if there are an even number of committee members. If the committee has an odd number of members, then the majority of the terms (half plus one) will incept on even years and the remaining members' terms incept on odd years. There is no maximum number of terms a member can serve. A vacancy shall be filled by an election by the Oversight Committee.

The Chairperson of the Member Services Committee shall serve a one-year term concurrent with the fiscal year of the Authority. Upon the completion of the term of the Committee Chair, the Committee Vice Chairperson shall become the Committee Chair. The Member Services Committee shall elect a new Vice Chairperson at its first meeting of the fiscal year of the Authority in which the Committee Vice Chairperson will be serving. In the absence of the Committee Chairperson, the Committee Vice Chairperson shall assume the role of Chairperson. If the Committee Chairperson has resigned or becomes incapacitated, the Committee Vice Chairperson shall assume the position as Chairperson and the Committee shall elect a new Vice Chairperson.

The Member Services Committee shall review applications for membership and make recommendations to the Board of Directors, underwrite Members of a Coverage Program, review claims made against a Coverage Program and take action as needed, including providing settlement authority, and implement safety and loss control strategies.

A majority of the members of the Member Services Committee shall constitute a quorum. An action by the Member Services Committee shall require a majority vote of those in attendance. Vacancies shall not be counted in determining a quorum.

## **B. FINANCE AND ADMINISTRATION COMMITTEE**

The Finance and Administration Committee shall consist of not less than five nor more than nine members of the Board of Directors, at the discretion of the Oversight Committee. All but one of the members is to be elected by the Oversight Committee, and the remaining member being the Treasurer, who shall have all the same rights as the other members. The terms of office shall be two years, with half the elected positions incepting on fiscal years starting on even numbered years and half the elected positions incepting on fiscal years starting on odd numbered years, if there are an even number of committee members. If the committee has an odd number of members, then the majority of the terms (half plus one) will incept on even years and the remaining members' terms incept on odd years. There is no maximum number of terms a member can serve. A vacancy shall be filled by an election by the Oversight Committee.

The Chairperson of the Finance and Administration Committee shall serve a one-year term concurrent with the fiscal year of the Authority. Upon the completion of the term of the Committee Chair, the Committee Vice Chairperson shall become the Committee Chair. The Finance and Administration Committee shall elect a new Committee Vice Chairperson at its first meeting of the fiscal year of the Authority in which the Committee Vice Chairperson shall be serving. In the absence of the Committee Chairperson, the Committee Vice Chairperson shall assume the role of Chairperson. If the Committee Chairperson has resigned or becomes incapacitated, the Committee Vice Chairperson shall assume the position as Chairperson and the Committee shall elect a new Vice Chairperson.

The Finance and Administration Committee shall review current financial conditions of the Authority and provide direction in the development of the budget for the coming fiscal year, review the allocation of revenues in the budget and make recommendations for change to the Board of Directors, and recommend to the Board the appropriate reserves for contingencies.

A majority of the members of the Finance and Administration Committee shall constitute a quorum. An action by the Finance and Administration Committee shall require a majority vote of those in attendance. Vacancies shall not be counted in determining a quorum.

## **C. OTHER COMMITTEES**

The Board of Directors may establish additional standing or ad hoc committees and delegate authority to such committees to accomplish certain tasks. Members of a committee shall remain members of that committee until such time as the Board appoints new members to the committee, the committee is dissolved by the Board, or the purpose has been completed and there are no more responsibilities assigned to the committee.

A quorum of a committee created under this section shall be a majority of the members of the committee, without counting any vacant positions. All actions by such committee shall require a majority vote of those in attendance, unless otherwise specifically stated.

Each committee shall appoint a chairperson who shall call the meetings.

## **ARTICLE VII – FISCAL YEAR**

The fiscal year shall commence on May 1 of each year and conclude on April 30 of the following year. Revenue and expenses shall be recorded on a full accrual basis.

## **ARTICLE VIII - BUDGET**

A budget shall be adopted prior to the inception of the fiscal year. The Budget shall separately show the following:

1. General and administrative costs;
2. Contributions, projected interest income and other income; and
3. The actuarially estimated claims and allocated claims adjustment costs.

## **ARTICLE IX - RECEIPT AND DISBURSEMENT OF FUNDS**

Payments to the Authority shall be received at its principal executive office. The Treasurer or other designee shall safeguard and invest funds in accordance with the Authority's current Investment Policy.

All disbursements (via check or electronic funds transfer) issuing funds of the Authority (for other than the payment of claims) shall require the signatures or approvals of the Treasurer and Chairperson, Vice Chairperson, or other Director or designee as approved by the Board. A register of all checks or electronic funds transfers issued since the last Board meeting shall be provided at each Board meeting and approved by the Board.

## **ARTICLE X – RESPONSIBILITIES OF THE PARTY**

The Authority is a participatory organization with the goal of reducing exposures to losses. To facilitate this goal, each Party agrees to perform the following functions in discharging its responsibilities:

1. Abide by all the rules and obligations imposed upon the Party by the Agreement, these Bylaws, any administrative policies and procedures adopted, any Master Program Documents and Memoranda of Coverage for any and all Coverage Programs to which the Member participates;
2. Appoint a Director and at least one Alternate to the Board;
3. Participate in the Liability Coverage Program;
4. Remit Contributions and other amounts due within 30 days of the date of invoice;
5. Cooperate fully with the Authority in reporting, and in determining the cause of claims and in the settlement of such claims; and
6. Upon withdrawal from the Authority, the Party shall remain responsible for any losses and any other costs which it has incurred while a Member of a Coverage Program and a Party to the Agreement.

## **ARTICLE XI - COVERAGE PROGRAMS**

All Parties to the Agreement shall participate in the Liability Coverage Program. Participation in any other Coverage Program is at the discretion of the Party.

Each Coverage Program shall have a Master Program Document that describes the rights and duties of the Authority, the Member, and the process by which the Coverage Program will be administered.

## **ARTICLE XII - PENALTY FOR MONEY IN ARREARS**

The penalty for Contributions not paid to the Authority within 30 days of the date of the invoice shall be the prime interest rate plus two points on the amount of Contributions owed. The prime rate used for penalty calculation will be the prime rate in effect 30 days after the invoice date at the commercial bank which holds funds of the Authority. This penalty is subject to a minimum amount established by resolution of the Board of Directors.

On appeal to the Oversight Committee, the Committee may waive the late payment penalty if the Party shows a hardship and presents a plan for repayment, if not already paid. Alternatively, or in addition, the Oversight Committee may prescribe or approve a payment plan for the Party other than those outlined in the Governing Documents of the Authority.

## **ARTICLE XIII - RIGHT OF OFFSET**

The Authority may offset any moneys owed to a Party, with amounts owed by the Party to the Authority whether the amounts owed by the Party are Contributions or any other amounts owed.

## **ARTICLE XIV - NEW PARTIES TO THE AGREEMENT**

A qualified public entity requesting to be a Party to the Authority shall complete an application form and provide other information and documentation requested by the Authority, including that required by any Coverage Program in which the prospective Party would like to participate.

Each prospective Party will submit a non-refundable application fee, as determined by the Board, to defray processing costs along with its completed application form. The prospective Party shall be presented in summary to the Board of Directors for a vote in accordance with the Agreement.

## **ARTICLE XV - HIERARCHY OF GOVERNING DOCUMENTS**

The Agreement forming the Authority shall be superior to these Bylaws and any provisions in these Bylaws that are contradictory or in conflict with any provisions in the Agreement shall be interpreted to be consistent with the Agreement or be voided to the extent it conflicts or is contradictory. The Board shall adopt Master Program Documents, and policies or procedures. However, such other documents shall be consistent with the Agreement and these Bylaws, and to the extent they are not consistent, those documents will be superseded by the Agreement and Bylaws.

## **ARTICLE XVI - AMENDMENTS**

These Bylaws may be amended by a majority vote of the Directors present and voting, provided that any amendment is compatible with the purposes of the Authority, is not in conflict with the Agreement, and has been submitted to the Board at least 30 days in advance. Any such amendment shall be effective immediately, unless otherwise designated.

## **APPENDIX A - PRINCIPAL EXECUTIVE OFFICE**

The principal executive office for the transaction of business of the Authority is hereby fixed and located at:

1750 Creekside Oaks Drive, Suite 200

Sacramento, CA 95833

**California Transit Systems Joint Powers Authority**  
**Comparison of JPA Agreements – Current versus Proposed**

Current to Proposed:

<b>Current JPA Reference</b>	<b>Changes in Proposed JPA</b>	<b>Proposed JPA Reference</b>
Page 1, Lines 1 - 3	Changing the opening paragraph prior to recitals for clarification purposes.	Page 1, Lines 1 - 3
Page 1, Line 27	Adding language to clarify the amended Agreement will become effective as soon as three-quarters of the current Parties to the Agreement approve the Agreement.	Page 1, Lines 26 - 27
Page 2, Lines 81 - 83	Article IV – Term of Agreement: Adding language to clarify the agreement is effective as amended from time to time.	Page 2, Lines 85 - 87
Page 3, Line 111 - 112	Article VII – Governing Documents: Including language stating the amended Bylaws are attached to the document and noting they will be deemed adopted upon the effective date of the Agreement. (The Board has the authority to adopt the Bylaws; however, because some of the amendments to the Bylaws dovetail with the amendments to the Agreement, the Board adopted the amended Bylaws to become effective upon the effective date of the Agreement). The language was also changed to clarify the Board may amend the Bylaws.	Page 3, Lines 113 - 114
Page 3, Line 130	Article VIII – Responsibilities of the Parties: Clarifying one or more Alternates may be appointed to the Board, which is CalTIP's current practice.	Page 3, Line 134
Page 4, Lines 148 - 154	Article X – Board of Directors: Adding language to maintain consistency regarding appointment of "one or more Alternates" to the Board, referring to the Bylaws for specifics regarding the constitution of the Board of Directors, and removing the specifics from the Agreement.	Page 4, Lines 153 - 154
Page 5, Line 202 - 203	Article XVI – New Parties: Removing the quorum requirement from this section of the Agreement. Specifics regarding the quorum requirement are contained in the amended Bylaws. (The Bylaws require a two-thirds affirmative vote of the Board present and voting).	N/A
Page 6, Lines 221 - 223	Article XVIII – Expulsion: Removing the quorum requirement from this section of the Agreement and referencing the Bylaws. (The Bylaws require a three-fourths vote of the Board present and voting). Adding language to clarify written notice of such action will be provided to the expelled Party at least 90 days prior to the effective date of the expulsion.	Page 6, Lines 220 - 222
N/A	Article XXII – Notices: Adding language stating notices of meetings may be provided via e-mail.	Page 7, Lines 290 - 291
Page 7, Line 303	Article XXV – Amendments: Changing the approval requirement to amend the Agreement from three-fourths of the Parties to two-thirds of the Parties for future amendments.	Page 7, Line 310

**CALIFORNIA TRANSIT SYSTEMS**

**JOINT POWERS AUTHORITY**

**JOINT POWERS AUTHORITY AGREEMENT**

May 2011



## TABLE OF CONTENTS

### JOINT POWERS AUTHORITY AGREEMENT

#### **CALIFORNIA TRANSIT SYSTEMS JOINT POWERS AUTHORITY (CalTIP)**

ARTICLE I - PURPOSE .....	1
ARTICLE II - CREATION OF THE CALIFORNIA TRANSIT SYSTEMS JOINT POWERS AUTHORITY .....	2
ARTICLE III - DEFINITIONS.....	2
ARTICLE IV - PARTIES TO THIS AGREEMENT.....	2
ARTICLE V - TERM OF AGREEMENT.....	2
ARTICLE VI - POWERS OF THE AUTHORITY .....	3
ARTICLE VII - GOVERNING DOCUMENTS.....	3
ARTICLE VIII - RESPONSIBILITIES OF THE PARTIES.....	3
ARTICLE IX - POWERS RESERVED UNTO THE PARTIES .....	4
ARTICLE X - BOARD OF DIRECTORS.....	4
ARTICLE XI - DUTIES OF THE BOARD NOT DELEGABLE.....	4
ARTICLE XII - BOARD MEETINGS AND RECORDS .....	4
ARTICLE XIII - OFFICERS OF THE AUTHORITY .....	5
ARTICLE XIV - ANNUAL BUDGET.....	5
ARTICLE XV - ADMINISTRATION OF FUNDS .....	5
ARTICLE XVI - NEW PARTIES.....	5
ARTICLE XVII - WITHDRAWAL.....	5
ARTICLE XVIII - EXPULSION.....	6
ARTICLE XIX - EFFECT OF EXPULSION OR WITHDRAWAL.....	6
ARTICLE XX - TERMINATION AND DISTRIBUTION .....	6
ARTICLE XXI - LIABILITY AND INDEMNIFICATION .....	6
ARTICLE XXII - NOTICES .....	7
ARTICLE XXIII - PROHIBITION AGAINST ASSIGNMENT .....	7
ARTICLE XXIV - ARBITRATION.....	7
ARTICLE XXV - AMENDMENTS.....	7
ARTICLE XXVI - AGREEMENT COMPLETE.....	8

1 This Agreement is executed in the State of California by and among those public entities which are  
2 parties signatory to this Agreement. All parties signatory to this Agreement shall hereinafter be called  
3 "Party" [collectively "Parties"].

#### 4 5 **RECITALS**

6  
7 **Whereas**, Article 1, Chapter 5, Division 7, Title 1 of the California Government Code (Section 6500 et  
8 seq.) permits two or more public entities, by agreement, to exercise jointly powers common to the  
9 contracting parties; and

10  
11 **Whereas**, it is the mutual benefit of the Parties and in the public interest that the Parties join together  
12 to provide:

- 13
- 14 • Pooling of their self-insured losses caused by injury to, or disease of, a person or damage to
  - 15 property;
  - 16 • Sharing the cost of excess insurance or reinsurance, if any, or pooling with other joint powers
  - 17 authorities or public entity pooling arrangement; and
  - 18 • Sharing the administration of the Authority created by this document.
- 19

20 **Whereas**, each Party desires to enter into this Agreement with each of the other Parties for the purpose  
21 of joint risk sharing and/or insuring against various risk of loss jointly, rather than individually;

22  
23 **NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

#### 24 25 **AGREEMENT**

26  
27 This amended Agreement replaces the original Agreement and any prior amendments that may exist.

28  
29 This Agreement is made under the authority of Government Code Section 6500 et seq. between the  
30 undersigned public entities, after the governing boards of the entities determine that it is in their best  
31 interest to execute this Agreement.

#### 32 33 **ARTICLE I - PURPOSE**

34  
35 The purpose of this Agreement is to exercise jointly powers common to each Party by:

- 36
- 37 • Creating an authority under Government Code Section 6500 et seq., a public entity that is
  - 38 separate and apart from the Parties, to be known as the California Transit System Joint Powers
  - 39 Authority, to administer a self-insurance pool,
  - 40 • Sharing losses and purchase as a group, insurance or reinsurance and participate in other joint
  - 41 powers authorities or other public entity pooling arrangements,
  - 42 • Maintaining funds sufficient to pay the losses to which the Parties agree to share through a
  - 43 Coverage Program, and
  - 44 • Purchasing jointly administrative and other services, including risk management, loss
  - 45 prevention, and legal defense in connection with the Coverage Programs.

46                   **ARTICLE II - CREATION OF THE CALIFORNIA TRANSIT SYSTEMS JOINT POWERS AUTHORITY**

47  
48 Pursuant to Government Code Section 6500 et seq., the Parties to this Agreement hereby create a public  
49 entity separate and apart from the Parties. This public entity created by this Agreement shall be known  
50 as the California Transit Systems Joint Powers Authority.  
51

52                   **ARTICLE III - DEFINITIONS**

- 53  
54           1. "Authority" shall mean the California Transit Systems Joint Powers Authority.  
55           2. "Board" or "Board of Directors" shall mean the governing board of the Authority.  
56           3. "Coverage Programs" shall mean programs as defined and adopted by the Board which may, but  
57           need not be limited to pooled risk programs, group purchase of insurance or reinsurance, or  
58           participation in other public entity pooling programs.  
59           4. "Coverage Program Documents" shall mean the Master Program Document defining the policies  
60           and procedures of the program and the Memorandum of Coverage defining the coverage  
61           provided by the program.  
62           5. "Contributions" shall mean payments by Members to the Authority, for other than interest,  
63           penalties paid, or reimbursements for payments made on behalf of the Member, for which the  
64           Authority is not liable.  
65           6. "Governing Documents" shall be those documents described in Article VII, Governing  
66           Documents.  
67           7. "Member" or collectively "Members" shall mean a Party who is participating in a particular  
68           Coverage Program.  
69           8. "Party" shall mean a signatory to this Agreement.  
70           9. "Officer" shall mean an officer of the Authority as defined in Article XIII.  
71

72                   **ARTICLE IV - PARTIES TO THIS AGREEMENT**

73  
74 Each Party to this Agreement certifies that it intends to, and does, contract with all other Parties who  
75 are signatories to this Agreement, and any signatories that may sign this Agreement in the future,  
76 pursuant to Article XVI. The withdrawal of any Party to this Agreement shall not affect this Agreement  
77 as respects the remaining Parties and those remaining Parties' intent to be bound by this Agreement.  
78

79                   **ARTICLE V - TERM OF AGREEMENT**

80  
81 As authorized by Government Code Section 6510, this Agreement was effective from May 1, 1987 and  
82 shall stay in full force, as is, as amended on May 1, 2012 or any other subsequent amendments, until  
83 terminated in accordance with Article XX.  
84  
85  
86  
87

88 **ARTICLE VI - POWERS OF THE AUTHORITY**

89  
90 The powers of the Authority shall be the powers enjoyed by the County of Nevada or, if the County of  
91 Nevada is no longer a Party to this Agreement then, the County of Siskiyou, and is authorized to do all  
92 acts necessary to fulfill the purposes of this Agreement including, but not limited to, the following:  
93

- 94 1. Make and enter into contracts;  
95 2. Incur debts, liabilities and obligations, but no debt, liability or obligation of the Authority is the  
96 debt, liability or obligation of any Party except as otherwise provided;  
97 3. Acquire, hold or dispose of real and personal property;  
98 4. Receive contributions and donations of property, funds, services and other forms of assistance  
99 from any source;  
100 5. Assess Parties as deemed appropriate by the Board;  
101 6. Sue and be sued in its own name;  
102 7. Acquire, construct, manage and maintain buildings; and  
103 8. Lease real or personal property including property of a Party, and receive, collect, invest and  
104 disburse monies.  
105

106 These powers shall be executed in a manner provided by appropriate law and as set forth in this  
107 Agreement.  
108

109 **ARTICLE VII - GOVERNING DOCUMENTS**

110  
111 The Board of Directors shall adopt Bylaws consistent with this Agreement and applicable law to govern  
112 the operations of the Authority. The Board of Directors may adopt Coverage Program Documents,  
113 consistent with this Agreement and the Bylaws. These Coverage Program Documents define the  
114 Coverage Programs, the Members rights and duties, the Authority's rights and duties, and the  
115 operations of the programs. The Board may also adopt policies and procedures, consistent with this  
116 Agreement, the Bylaws, or Coverage Program Documents, to assist in the governance of the Authority's  
117 operations and activities. The Agreement, the Bylaws, Coverage Program Documents and policies and  
118 procedures adopted by the Board shall constitute the Governing Documents of the Authority.  
119

120 Unless otherwise stated, a Governing Document may be amended by a majority of the Board of  
121 Directors at a duly noticed regular or special Board meeting.  
122

123 **ARTICLE VIII - RESPONSIBILITIES OF THE PARTIES**

124  
125 The Parties to this Agreement shall have the following responsibilities:  
126

- 127 1. To abide by the terms of this Agreement and other Governing Documents;  
128 2. To cooperate fully with the Authority in the settlement of claims;  
129 3. To pay Contributions, assessments, or other charges promptly to the Authority when due; and  
130 4. To appoint a Director and an Alternate to the Board of Directors and to reappoint those  
131 positions upon the departure of anyone from those positions.

132 **ARTICLE IX - POWERS RESERVED UNTO THE PARTIES**

133  
134 The Parties reserve unto themselves the following powers:

- 135  
136 1. To amend this Agreement;  
137 2. Appoint the Representatives and Alternates to the Board of Directors; and  
138 3. To terminate the Authority in accordance with Article XX.  
139

140 **ARTICLE X - BOARD OF DIRECTORS**

141  
142 There shall be a Board of Directors to govern the affairs of the Authority. The Board of Directors shall  
143 have all the powers of the Authority except those specifically reserved to the Parties. The Board of  
144 Directors shall have the authority to create committees as deemed necessary for the operations of the  
145 Authority. The Board has the power to delegate any and all of its powers, not specifically reserved  
146 exclusively to the Board, to a committee or an Officer of the Authority.  
147

148 The Board of Directors shall consist of one Director and one Alternate from each Party to this  
149 Agreement. The Party shall appoint by official action an officer or employee of the Party to be the  
150 Director and such appointment shall remain in effect until such time as the Party appoints another to be  
151 the Director. The Party shall appoint by official action an officer or employee of the Party to be the  
152 Alternate and such appointment shall remain in effect until such time as the Party appoints another to  
153 be the Alternate. Each Director shall have one vote, and each Alternate shall have one vote only if the  
154 Director for which he/she is an Alternate is absent from the meeting.  
155

156 **ARTICLE XI - DUTIES OF THE BOARD NOT DELEGABLE**

157  
158 The Board may not delegate to any committee, office or person the authority to:

- 159  
160 1. Adopt, amend or alter the Bylaws;  
161 2. Adopt the Authority's Annual Budget;  
162 3. Create a Coverage Program;  
163 4. Accept a Party to this Agreement; or  
164 5. Expel a Party to this Agreement.  
165

166 **ARTICLE XII - BOARD MEETINGS AND RECORDS**

167  
168 The Board of Directors shall hold at least one meeting each fiscal year. Regular and special meetings  
169 may be called in accordance with the Bylaws of this Authority and applicable laws. All meetings shall be  
170 open to the public except as permitted by Government Code Section 54950 et seq. The Secretary shall  
171 keep full and complete minutes of all Board meetings.  
172  
173  
174  
175

176 **ARTICLE XIII - OFFICERS OF THE AUTHORITY**

177  
178 The Board shall elect one of its members as Chairperson and one as Vice Chairperson. The Board shall  
179 appoint a Secretary. The duties of the Chairperson, Vice Chairperson and Secretary shall be defined in  
180 the Bylaws.

181  
182 In lieu of the designation of a treasurer and auditor as per Government Code Section 6505.6, the Board  
183 shall elect a Treasurer, who shall have, among other duties defined in the Bylaws, the duties of the  
184 treasurer and auditor as described in Government Code Section 6505.5.

185  
186 The Board may appoint other officers of the Authority as described in the Bylaws.  
187

188 **ARTICLE XIV - ANNUAL BUDGET**

189  
190 Pursuant to Government Code Section 6508, the Board shall approve a budget for any given fiscal year  
191 prior to the inception of that year.  
192

193 **ARTICLE XV - ADMINISTRATION OF FUNDS**

194  
195 The Authority shall be responsible for the strict accountability of all funds and reports of all receipts and  
196 disbursements in conformity with Government Code Section 6505. All funds of the Authority may be  
197 held in common although there shall be a separate accounting for funds of each Coverage Program.  
198

199 **ARTICLE XVI - NEW PARTIES**

200  
201 Prospective Parties may apply to the Board of Directors at any time. The Board shall have the power to  
202 accept a prospective Party, after reviewing their application, with at least two-thirds affirmative vote of  
203 the entire Board. The membership shall become effective upon the Board's approval and the signing of  
204 this Agreement, participation in all mandatory Coverage Programs, and compliance with any and all  
205 other requirements imposed upon membership by the Bylaws or other Governing Documents.  
206

207 **ARTICLE XVII - WITHDRAWAL**

208  
209 A Party to this Agreement may not withdraw as a party to this Agreement prior to being a Party for at  
210 least three full fiscal years. A Party, who has been a Party for at least three full fiscal years, may  
211 withdraw from this Agreement only on the completion of a fiscal year. The Party must provide the  
212 Chairperson written notice of intent to withdraw at least six-months prior to withdrawal. The Party may  
213 rescind its notice of intent to withdraw at any time prior to ninety-days prior to the commencement of  
214 the next fiscal year. The Board may authorize rescission of the intent to withdraw upon a Party's request  
215 pursuant to the Bylaws at any time.  
216  
217  
218

219  
220  
221  
222  
223  
224  
  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
  
256  
257  
258  
259  
260  
261  
262

**ARTICLE XVIII - EXPULSION**

The Authority may expel a Party to this Agreement as a Party by a three-fourth vote of the entire Board. The Party shall be given written notice of such action of the Board at least ninety-days prior to the expulsion.

**ARTICLE XIX - EFFECT OF EXPULSION OR WITHDRAWAL**

Pursuant to Government Code Section 6512.2, termination of any Party to this Agreement as a Party shall not be construed to be completion of the purpose of the Agreement and shall not require the return of any Contributions, payments or advances made by the Party until the Agreement is rescinded or terminated by all Parties in accordance with Article XX.

Termination of a Party to this Agreement as a Party shall not terminate its continuing responsibilities defined in any Governing Document or Coverage Program Document for the period of time in which the Party participated, including, but not limited to:

1. Cooperate fully with the Authority in the investigation and settlement of a claim;
2. Pay any Contributions, retentions or deductibles, assessments or other charges which are due and payable; and
3. Provide any statistical or loss experience data and other information as may be necessary for the Authority to carry out the purpose of this Agreement.

**ARTICLE XX - TERMINATION AND DISTRIBUTION**

This Agreement may be terminated at any time with written consent of three-fourths of the Parties; provided, however, that this Agreement and the Authority shall exist for the purpose of disposing of all claims, distribution of assets and any other functions necessary to wind up the affairs of the Authority. The Board shall be vested with all the powers of the Authority for the purposes of winding down and dissolving the business affairs of the Authority, including the power to assess past and present Parties in accordance with Coverage Program Documents.

In accordance with Government Code Section 6512, all assets of the Authority shall be distributed among those who were Parties within ten years of termination, in proportion to the Parties' Contributions. The Board shall determine when claims and liabilities are sufficiently realized as to not jeopardize the payment of any claim or liability that may arise in the future.

**ARTICLE XXI - LIABILITY AND INDEMNIFICATION**

Pursuant to Government Code Section 6508.1, the debts, liabilities and obligations of the Authority shall not constitute debts, liabilities or obligations of any Party, except to the extent and in the proportions, imposed by the Bylaws or other Governing Documents. Each Party is independent of every other Party and of the Authority and not the agent of any Party or of the Authority. In contemplation of the provisions of Section 895.2 of the California Government Code, imposing certain tort liability jointly

upon public entities, solely by reason of a joint powers agreement as defined in Section 895 of that code, each Party, as between each other, pursuant to the authorization contained in Section 895.4 and 895.6 of that code, does hereby assume the full liability imposed upon it, or any of its officers, agents, or employees by law for injury caused by a negligent or wrongful act or omission occurring in the performance of this Agreement, to the same extent that such liability would be imposed in the absence of Section 895.2 of the California Government Code. To achieve the above-stated purpose, each Party shall indemnify and hold harmless each other Party for any loss, costs, or expense that may be imposed upon such other Party solely by virtue of Section 895.2. The provisions of Section 2778 of the California Civil Code are made a part of this Agreement as if set forth fully in this Agreement.

The members of the Board of Directors and the Officers and employees of the Authority shall act in good faith and in the best interests of the Authority in the performance of their duties. The members of the Board of Directors and Officers and employees shall be liable for an act or omission within the scope of their employment with the Authority as a public entity only in the event that they act or fail to act because of actual fraud, corruption, or malice. No member shall be liable for any actions taken or omissions by another member of the Board. Funds of the Authority shall be used to defend and indemnify members of the Board, Officers, and employees for any act or omission pursuant to the provisions of the Government Code Section 910 to 996.6, inclusive. The Authority may purchase insurance covering acts or omissions of the Board of Directors, Officers, and employees.

#### **ARTICLE XXII - NOTICES**

Notices to any or all Parties shall be sufficient if mailed to their respective addresses on file with the Authority. Notice to the Authority shall be sufficient if mailed to the official address of the Authority as established by Resolution.

#### **ARTICLE XXIII - PROHIBITION AGAINST ASSIGNMENT**

No Party may assign any right, claim, or interest it may have under this Agreement, and no creditor, assignee, or third party beneficiary of the Party shall have any right, claim or title to any part, share, interest, fund, premium, or asset of the Authority.

#### **ARTICLE XXIV - ARBITRATION**

Any controversy between the Parties hereto arising out of this Agreement shall be submitted to arbitration, and such arbitration shall comply with and be governed by the provisions of the California Arbitration Act, Sections 1280 through 1294.2 of the California Code of Civil Procedure.

#### **ARTICLE XXV - AMENDMENTS**

This Agreement may be amended at any time by approval of three-fourths of the Parties.



**ARTICLE XXVI - AGREEMENT COMPLETE**

The foregoing constitutes the full and complete agreement of the Parties. There are no oral understandings or agreements not set forth in writing herein.

In Witness Whereof, the undersigned Party hereto has executed this Agreement on the date indicated below:

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

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

Printed Name of Authorized Signor

\_\_\_\_\_  
Signature of Authorized Signor

\_\_\_\_\_  
Title of Authorized Signor

\_\_\_\_\_  
Name of Agency

**CALIFORNIA TRANSIT SYSTEMS**

**JOINT POWERS AUTHORITY**

**AMENDED AND RESTATED**  
**JOINT POWERS AUTHORITY AGREEMENT**

**As Amended 2019**

## TABLE OF CONTENTS

### AMENDED AND RESTATED JOINT POWERS AUTHORITY AGREEMENT

#### CALIFORNIA TRANSIT SYSTEMS JOINT POWERS AUTHORITY (CalTIP)

ARTICLE I - PURPOSE .....	1
ARTICLE II - CREATION OF THE CALIFORNIA TRANSIT SYSTEMS JOINT POWERS AUTHORITY .....	2
ARTICLE III - DEFINITIONS.....	2
ARTICLE IV - PARTIES TO THIS AGREEMENT.....	2
ARTICLE V - TERM OF AGREEMENT.....	2
ARTICLE VI - POWERS OF THE AUTHORITY .....	3
ARTICLE VII - GOVERNING DOCUMENTS.....	3
ARTICLE VIII - RESPONSIBILITIES OF THE PARTIES.....	3
ARTICLE IX - POWERS RESERVED UNTO THE PARTIES .....	4
ARTICLE X - BOARD OF DIRECTORS .....	4
ARTICLE XI - DUTIES OF THE BOARD NOT DELEGABLE.....	4
ARTICLE XII - BOARD MEETINGS AND RECORDS .....	4
ARTICLE XIII - OFFICERS OF THE AUTHORITY .....	5
ARTICLE XIV - ANNUAL BUDGET.....	5
ARTICLE XV - ADMINISTRATION OF FUNDS .....	5
ARTICLE XVI - NEW PARTIES.....	5
ARTICLE XVII - WITHDRAWAL.....	5
ARTICLE XVIII - EXPULSION.....	6
ARTICLE XIX - EFFECT OF EXPULSION OR WITHDRAWAL .....	6
ARTICLE XX - TERMINATION AND DISTRIBUTION .....	6
ARTICLE XXI - LIABILITY AND INDEMNIFICATION .....	6
ARTICLE XXII - NOTICES .....	7
ARTICLE XXIII - PROHIBITION AGAINST ASSIGNMENT .....	7
ARTICLE XXIV - ARBITRATION.....	7
ARTICLE XXV - AMENDMENTS.....	7
ARTICLE XXVI - AGREEMENT COMPLETE.....	8

1 This Amended and Restated Joint Powers Agreement ("Agreement") is executed by and among those  
2 public entities which are signatories to this Agreement. Such parties shall hereinafter be referred to  
3 individually as "Party" or collectively, "Parties."

#### 4 **RECITALS**

5  
6 **Whereas**, Article 1, Chapter 5, Division 7, Title 1 of the California Government Code (Section 6500 et  
7 seq.) permits two or more public entities, by agreement, to exercise jointly powers common to the  
8 contracting parties; and

9  
10 **Whereas**, it is the mutual benefit of the Parties and in the public interest that the Parties join together  
11 to provide:

- 12
- 13 • Pooling of their self-insured losses caused by injury to, or disease of, a person or damage to
  - 14 property;
  - 15 • Sharing the cost of excess insurance or reinsurance, if any, or pooling with other joint powers
  - 16 authorities or public entity pooling arrangement; and
  - 17 • Sharing the administration of the Authority created by this document.
- 18

19 **Whereas**, each Party desires to enter into this Agreement with each of the other Parties for the purpose  
20 of joint risk sharing and/or insuring against various risk of loss jointly, rather than individually;

21  
22 **NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

#### 23 **AGREEMENT**

24  
25  
26 This amended Agreement replaces and restates in its entirety the Agreement and any prior amendments  
27 that may exist and is effective upon approval by three-quarters of the current Parties to the Agreement.

28  
29 This Agreement is made under the authority of Government Code Section 6500 et seq. between the  
30 undersigned public entities, after the governing boards of the entities determine that it is in their best  
31 interest to execute this Agreement.

#### 32 **ARTICLE I - PURPOSE**

33  
34  
35  
36 The purpose of this Agreement is to exercise jointly powers common to each Party by:

- 37
- 38 • Creating an authority under Government Code Section 6500 et seq., a public entity that is
  - 39 separate and apart from the Parties, to be known as the California Transit System Joint Powers
  - 40 Authority, to administer a self-insurance pool,
  - 41 • Sharing losses and purchase as a group, insurance or reinsurance and participate in other joint
  - 42 powers authorities or other public entity pooling arrangements,
  - 43 • Maintaining funds sufficient to pay the losses to which the Parties agree to share through a
  - 44 Coverage Program, and
  - 45 • Purchasing jointly administrative and other services, including risk management, loss
  - 46 prevention, and legal defense in connection with the Coverage Programs.

47 **ARTICLE II - CREATION OF THE CALIFORNIA TRANSIT SYSTEMS JOINT POWERS AUTHORITY**

48  
49 Pursuant to Government Code Section 6500 et seq., the Parties to this Agreement hereby create a public  
50 entity separate and apart from the Parties. This public entity created by this Agreement shall be known  
51 as the California Transit Systems Joint Powers Authority.  
52

53  
54 **ARTICLE III - DEFINITIONS**

- 55  
56 1. "Authority" shall mean the California Transit Systems Joint Powers Authority.  
57 2. "Board" or "Board of Directors" shall mean the governing board of the Authority.  
58 3. "Coverage Programs" shall mean programs as defined and adopted by the Board which may, but  
59 need not be limited to pooled risk programs, group purchase of insurance or reinsurance, or  
60 participation in other public entity pooling programs.  
61 4. "Coverage Program Documents" shall mean the Master Program Document defining the policies  
62 and procedures of the program and the Memorandum of Coverage defining the coverage  
63 provided by the program.  
64 5. "Contributions" shall mean payments by Members to the Authority, for other than interest,  
65 penalties paid, or reimbursements for payments made on behalf of the Member, for which the  
66 Authority is not liable.  
67 6. "Governing Documents" shall be those documents described in Article VII, Governing  
68 Documents.  
69 7. "Member" or collectively "Members" shall mean a Party who is participating in a particular  
70 Coverage Program.  
71 8. "Party" shall mean a signatory to this Agreement.  
72 9. "Officer" shall mean an officer of the Authority as defined in Article XIII.  
73

74  
75 **ARTICLE IV - PARTIES TO THIS AGREEMENT**

76  
77 Each Party to this Agreement certifies that it intends to, and does, contract with all other Parties who  
78 are signatories to this Agreement, and any signatories that may sign this Agreement in the future,  
79 pursuant to Article XVI. The withdrawal of any Party to this Agreement shall not affect this Agreement  
80 as respects the remaining Parties and those remaining Parties' intent to be bound by this Agreement.  
81

82  
83 **ARTICLE V - TERM OF AGREEMENT**

84  
85 As authorized by Government Code Section 6510, this Agreement which was originally effective May  
86 1, 1987 shall stay in full force, as amended from time to time, until terminated in accordance with  
87 Article XX.

88 **ARTICLE VI - POWERS OF THE AUTHORITY**

89  
90 The powers of the Authority shall be the powers enjoyed by the County of Nevada or, if the County of  
91 Nevada is no longer a Party to this Agreement then, the County of Siskiyou, and is authorized to do all  
92 acts necessary to fulfill the purposes of this Agreement including, but not limited to, the following:  
93

- 94 1. Make and enter into contracts;  
95 2. Incur debts, liabilities and obligations, but no debt, liability or obligation of the Authority is the  
96 debt, liability or obligation of any Party except as otherwise provided;  
97 3. Acquire, hold or dispose of real and personal property;  
98 4. Receive contributions and donations of property, funds, services and other forms of assistance  
99 from any source;  
100 5. Assess Parties as deemed appropriate by the Board;  
101 6. Sue and be sued in its own name;  
102 7. Acquire, construct, manage and maintain buildings; and  
103 8. Lease real or personal property including property of a Party, and receive, collect, invest and  
104 disburse monies.

105  
106 These powers shall be executed in a manner provided by appropriate law and as set forth in this  
107 Agreement.  
108

109  
110 **ARTICLE VII - GOVERNING DOCUMENTS**

111  
112 The attached amended Bylaws shall be deemed adopted upon the effective date of this Agreement.  
113 Thereafter, the Board of Directors may amend the Bylaws consistent with this Agreement and  
114 applicable law to govern the operations of the Authority. The Board of Directors may adopt Coverage  
115 Program Documents, consistent with this Agreement and the Bylaws. These Coverage Program  
116 Documents define the Coverage Programs, the Members' rights and duties, the Authority's rights and  
117 duties, and the operations of the programs. The Board may also adopt policies and procedures,  
118 consistent with this Agreement, the Bylaws, or Coverage Program Documents, to assist in the  
119 governance of the Authority's operations and activities. The Agreement, the Bylaws, Coverage Program  
120 Documents and policies and procedures adopted by the Board shall constitute the Governing  
121 Documents of the Authority.  
122

123 Unless otherwise stated, a Governing Document may be amended by a majority of the Board of  
124 Directors at a duly noticed regular or special Board meeting.  
125

126  
127 **ARTICLE VIII - RESPONSIBILITIES OF THE PARTIES**

128  
129 The Parties to this Agreement shall have the following responsibilities:  
130

- 131 1. To abide by the terms of this Agreement and other Governing Documents;  
132 2. To cooperate fully with the Authority in the settlement of claims;  
133 3. To pay Contributions, assessments, or other charges promptly to the Authority when due; and  
134 4. To appoint a Director and one or more Alternates to the Board of Directors and to  
135 reappoint those positions upon the departure of anyone from those positions.

136 **ARTICLE IX - POWERS RESERVED UNTO THE PARTIES**

137  
138 The Parties reserve unto themselves the following powers:

- 139  
140 1. To amend this Agreement;  
141 2. Appoint the Representatives and Alternates to the Board of Directors; and  
142 3. To terminate the Authority in accordance with Article XX.  
143  
144

145 **ARTICLE X - BOARD OF DIRECTORS**

146  
147 There shall be a Board of Directors to govern the affairs of the Authority. The Board of Directors shall  
148 have all the powers of the Authority except those specifically reserved to the Parties. The Board of  
149 Directors shall have the authority to create committees as deemed necessary for the operations of the  
150 Authority. The Board has the power to delegate any and all of its powers, not specifically reserved  
151 exclusively to the Board, to a committee or an Officer of the Authority.  
152

153 The Board of Directors shall consist of one Director and one or more Alternates for each Party to this  
154 Agreement as provided for in the Bylaws.  
155  
156

157 **ARTICLE XI - DUTIES OF THE BOARD NOT DELEGABLE**

158  
159 The Board may not delegate to any committee, office or person the authority to:

- 160  
161 1. Adopt, amend or alter the Bylaws;  
162 2. Adopt the Authority's Annual Budget;  
163 3. Create a Coverage Program;  
164 4. Accept a Party to this Agreement; or  
165 5. Expel a Party to this Agreement.  
166  
167

168 **ARTICLE XII - BOARD MEETINGS AND RECORDS**

169  
170 The Board of Directors shall hold at least one meeting each fiscal year. Regular and special meetings  
171 may be called in accordance with the Bylaws of this Authority and applicable laws. All meetings shall be  
172 open to the public except as permitted by Government Code Section 54950 et seq. The Secretary shall  
173 keep full and complete minutes of all Board meetings.

174 **ARTICLE XIII - OFFICERS OF THE AUTHORITY**

175  
176 The Board shall elect one of its members as Chairperson and one as Vice Chairperson. The Board shall  
177 appoint a Secretary. The duties of the Chairperson, Vice Chairperson and Secretary shall be defined in  
178 the Bylaws.

179  
180 In lieu of the designation of a treasurer and auditor as per Government Code Section 6505.6, the Board  
181 shall elect a Treasurer, who shall have, among other duties defined in the Bylaws, the duties of the  
182 treasurer and auditor as described in Government Code Section 6505.5.

183  
184 The Board may appoint other officers of the Authority as described in the Bylaws.  
185

186 **ARTICLE XIV - ANNUAL BUDGET**

187  
188  
189 Pursuant to Government Code Section 6508, the Board shall approve a budget for any given fiscal year  
190 prior to the inception of that year.  
191

192 **ARTICLE XV - ADMINISTRATION OF FUNDS**

193  
194  
195 The Authority shall be responsible for the strict accountability of all funds and reports of all receipts and  
196 disbursements in conformity with Government Code Section 6505. All funds of the Authority may be  
197 held in common although there shall be a separate accounting for funds of each Coverage Program.  
198

199 **ARTICLE XVI - NEW PARTIES**

200  
201  
202 Prospective Parties may apply to the Board of Directors at any time. The Board shall have the power to  
203 accept a prospective Party, after reviewing their application. The membership shall become effective  
204 upon the Board's approval and the signing of this Agreement, participation in all mandatory Coverage  
205 Programs, and compliance with any and all other requirements imposed upon membership by the  
206 Bylaws or other Governing Documents.  
207

208 **ARTICLE XVII - WITHDRAWAL**

209  
210  
211 A Party to this Agreement may not withdraw as a party to this Agreement prior to being a Party for at  
212 least three full fiscal years. A Party, who has been a Party for at least three full fiscal years, may  
213 withdraw from this Agreement only on the completion of a fiscal year. The Party must provide the  
214 Chairperson written notice of intent to withdraw at least six-months prior to withdrawal. The Party may  
215 rescind its notice of intent to withdraw at any time prior to ninety-days prior to the commencement of  
216 the next fiscal year. The Board may authorize rescission of the intent to withdraw upon a Party's request  
217 pursuant to the Bylaws at any time.



218 **ARTICLE XVIII - EXPULSION**

219  
220 The Board may expel a Party to this Agreement as a Party as provided for in the Bylaws. The expelled  
221 Party shall be given written notice of such action of the Board at least ninety-days prior to the effective  
222 date of the expulsion.  
223

224  
225 **ARTICLE XIX - EFFECT OF EXPULSION OR WITHDRAWAL**

226  
227 Pursuant to Government Code Section 6512.2, termination of any Party to this Agreement as a Party  
228 shall not be construed to be completion of the purpose of the Agreement and shall not require the  
229 return of any Contributions, payments or advances made by the Party until the Agreement is rescinded  
230 or terminated by all Parties in accordance with Article XX.  
231

232 Termination of a Party to this Agreement as a Party shall not terminate its continuing responsibilities  
233 defined in any Governing Document or Coverage Program Document for the period of time in which the  
234 Party participated, including, but not limited to:

- 235  
236 1. Cooperate fully with the Authority in the investigation and settlement of a claim;  
237 2. Pay any Contributions, retentions or deductibles, assessments or other charges which are due  
238 and payable; and  
239 3. Provide any statistical or loss experience data and other information as may be necessary for  
240 the Authority to carry out the purpose of this Agreement.  
241

242  
243 **ARTICLE XX - TERMINATION AND DISTRIBUTION**

244  
245 This Agreement may be terminated at any time with written consent of three-fourths of the Parties;  
246 provided, however, that this Agreement and the Authority shall exist for the purpose of disposing of all  
247 claims, distribution of assets and any other functions necessary to wind up the affairs of the Authority.  
248 The Board shall be vested with all the powers of the Authority for the purposes of winding down and  
249 dissolving the business affairs of the Authority, including the power to assess past and present Parties in  
250 accordance with Coverage Program Documents.  
251

252 In accordance with Government Code Section 6512, all assets of the Authority shall be distributed  
253 among those who were Parties within ten years of termination, in proportion to the Parties'  
254 Contributions. The Board shall determine when claims and liabilities are sufficiently realized as to not  
255 jeopardize the payment of any claim or liability that may arise in the future.  
256

257  
258 **ARTICLE XXI - LIABILITY AND INDEMNIFICATION**

259  
260 Pursuant to Government Code Section 6508.1, the debts, liabilities and obligations of the Authority shall  
261 not constitute debts, liabilities or obligations of any Party, except to the extent and in the proportions,  
262 imposed by the Bylaws or other Governing Documents. Each Party is independent of every other Party  
263 and of the Authority and not the agent of any Party or of the Authority. In contemplation of the  
264 provisions of Section 895.2 of the California Government Code, imposing certain tort liability jointly

upon public entities, solely by reason of a joint powers agreement as defined in Section 895 of that code, each Party, as between each other, pursuant to the authorization contained in Section 895.4 and 895.6 of that code, does hereby assume the full liability imposed upon it, or any of its officers, agents, or employees by law for injury caused by a negligent or wrongful act or omission occurring in the performance of this Agreement, to the same extent that such liability would be imposed in the absence of Section 895.2 of the California Government Code. To achieve the above-stated purpose, each Party shall indemnify and hold harmless each other Party for any loss, costs, or expense that may be imposed upon such other Party solely by virtue of Section 895.2. The provisions of Section 2778 of the California Civil Code are made a part of this Agreement as if set forth fully in this Agreement.

The members of the Board of Directors and the Officers and employees of the Authority shall act in good faith and in the best interests of the Authority in the performance of their duties. The members of the Board of Directors and Officers and employees shall be liable for an act or omission within the scope of their employment with the Authority as a public entity only in the event that they act or fail to act because of actual fraud, corruption, or malice. No member shall be liable for any actions taken or omissions by another member of the Board. Funds of the Authority shall be used to defend and indemnify members of the Board, Officers, and employees for any act or omission pursuant to the provisions of the Government Code Section 910 to 996.6, inclusive. The Authority may purchase insurance covering acts or omissions of the Board of Directors, Officers, and employees.

#### **ARTICLE XXII - NOTICES**

Notices to any or all Parties shall be sufficient if mailed to their respective addresses on file with the Authority. Notice to the Authority shall be sufficient if mailed to the official address of the Authority as established by Resolution. Notices of meetings may be given by electronic mail to the respective electronic mail addresses on file with the Authority, which notice shall be deemed sufficient notice.

#### **ARTICLE XXIII - PROHIBITION AGAINST ASSIGNMENT**

No Party may assign any right, claim, or interest it may have under this Agreement, and no creditor, assignee, or third party beneficiary of the Party shall have any right, claim or title to any part, share, interest, fund, premium, or asset of the Authority.

#### **ARTICLE XXIV - ARBITRATION**

Any controversy between the Parties hereto arising out of this Agreement shall be submitted to arbitration, and such arbitration shall comply with and be governed by the provisions of the California Arbitration Act, Sections 1280 through 1294.2 of the California Code of Civil Procedure.

#### **ARTICLE XXV - AMENDMENTS**

This Agreement may be amended at any time by approval of two-thirds of the Parties.

**ARTICLE XXVI - AGREEMENT COMPLETE**

The foregoing constitutes the full and complete agreement of the Parties. There are no oral understandings or agreements not set forth in writing herein.

In Witness Whereof, the undersigned Party hereto has executed this Agreement on the date indicated below:

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

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

Printed Name of Authorized Signor

\_\_\_\_\_  
Signature of Authorized Signor

\_\_\_\_\_  
Title of Authorized Signor

\_\_\_\_\_  
Name of Agency

ITEM # E4

**DATE:** July 10, 2019

**TO:** Board Chair David Avila and Members of the Omnitrans Board of Directors

**THROUGH:** P. Scott Graham, CEO/General Manager

**FROM:** Araceli Barajas, Senior Executive Assistant to the CEO/General Manager  
Clerk of the Board

**SUBJECT: ADOPT RESOLUTION NO. 315-19 TO AMEND CONFLICT OF  
INTEREST CODE**

**FORM MOTION**

Adopt Resolution No. 315-19, amending the Conflict of Interest Code of Omnitrans.

**BACKGROUND**

The Political Reform Act (the “Act”) requires all public agencies to adopt and maintain a Conflict of Interest Code containing the rules for disclosure of personal assets. The Conflict of Interest Code must specifically designate all agency positions that make or participate in the making of decisions and assign specific types of personal assets to be disclosed that may be affected by the exercise of powers and duties of that position.

The Act further requires that agencies regularly review and update their Codes as necessary when directed by the code-reviewing body or when change is necessitated by changed circumstances (Sections 87306 and 87306.5). The Board of Supervisors is Omnitrans code-reviewing body and directed that the Code be reviewed as required under the Act. During this review, staff found that amendments to the Code are necessary.

Attached is a redlined version of the proposed amended Code showing that the revisions of the Conflict of Interest Code are based on establishing and recognizing new positions that must be designated and revise titles to existing positions.

**CONCLUSION**

Staff recommends that the Board of Directors Adopt Resolution No. 315-19 amending the Conflict of Interest Code of Omnitrans and directing that such amendment be submitted to the San Bernardino County Board of Supervisors as Omnitrans’ code-reviewing body (Gov. Code § 82011) requesting approval of the amendment as required under Government Code section 87303.

PSG:AB:AF

Attachments: A. Resolution No. 315-19, B. Redline Version, C. Clean Version

**RESOLUTION NO. 315-19**

**RESOLUTION OF THE OMNITRANS BOARD OF  
DIRECTORS, SAN BERNARDINO COUNTY,  
CALIFORNIA, ADOPTING AN AMENDED  
CONFLICT OF INTEREST CODE PURSUANT TO  
THE POLITICAL REFORM ACT OF 1974**

WHEREAS, the State of California enacted the Political Reform Act of 1974, Government Code Section 81000 et seq. (the “Act”), which contains provisions relating to conflicts of interest which potentially affect all officers, employees and consultants of Omnitrans and requires all public agencies to adopt and promulgate a conflict of interest code; and

WHEREAS, the Board of Directors adopted a Conflict of Interest Code (the “Code”) in compliance with the Act which was last amended November 7, 2018; and

WHEREAS, subsequent changed circumstances within Omnitrans have made it advisable and necessary pursuant to Sections 87306 and 87307 of the Act to amend and update Omnitrans’ Code; and

WHEREAS, the potential penalties for violation of the provisions of the Act are substantial and may include criminal and civil liability, as well as equitable relief which could result in Omnitrans being restrained or prevented from acting in cases where the provisions of the Act may have been violated; and

WHEREAS, notice of the time and place of a public meeting on, and of consideration by the Board of Directors of, the proposed amended Code was provided each affected designated position and publicly posted for review at the offices of Omnitrans; and

WHEREAS, a public meeting was held upon the proposed amended Code at a regular meeting of the Board of Directors on July 10, 2019, at which all present were given an opportunity to be heard on the proposed amended Code.

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Directors does hereby adopt the proposed amended Omnitrans Conflict of Interest Code, a copy of which is attached hereto and shall be on file with the Assistant to the CEO/General Manager and available to the public for inspection and copying during regular business hours;

BE IT FURTHER RESOLVED that the said amended Code shall be submitted to the Board of Supervisors of the County of San Bernardino for approval and said Code shall become effective immediately upon approval of the Board of Supervisors.

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Omnitrans Board of Directors, at their regular meeting held on the 10<sup>th</sup> day of July 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

---

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

The foregoing resolution is hereby approved this 10<sup>th</sup> day of July 2019.

---

David Avila  
Board Chair, Omnitrans Board of Directors

Approved as to form:

---

Haviva Shane  
Counsel for Omnitrans

**LEGISLATIVE VERSION**  
**(Shows Changes Made)****OMNITRANS**  
**CONFLICT OF INTEREST CODE**  
**AMENDED ~~NOVEMBER 7, 2018~~ JULY 10, 2019**

The Political Reform Act, (Gov. Code §81000 et seq.,) requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, (2 Cal. Code of Regs. §18730), that contains terms of a standard Conflict of Interest Code, which can be incorporated by reference in an agency's code. After public notice and hearing, the standard code may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This Incorporation Page, Regulation 18730 (attached) and the attached Appendix designating positions and establishing disclosure categories, shall constitute the Conflict of Interest Code of Omnitrans.

All officials and designated positions required to submit a statement of economic interests shall file their statements with the Executive Staff Assistant as Omnitrans' Filing Officer. The Executive Staff Assistant shall make and retain a copy of all statements filed by the Board of Directors, their Alternates and the General Manager and forward the originals of such statements to the Clerk of the Board of Supervisors of the County of San Bernardino. The Executive Staff Assistant shall retain the original statements filed by all other officials and designated positions and make all retained statements available for public inspection and reproduction during regular business hours. (Gov. Code § 81008.)

All officials and designated positions required to submit a statement of economic interests shall receive ethics training as required pursuant to Government Code section 53235 (AB 1234). The Filing Officer shall annually provide all filers with information on training available to meet the requirements of Section 53235, and maintain required records indicating the dates that filers satisfied the training requirements and the entity that provided the training. These records shall be retained for five years after the date of training and are public records subject to disclosure under the California Public Records Act. (Gov. Code § 53235.2.)

# **APPENDIX**

## **CONFLICT OF INTEREST CODE**

### **OF OMNITRANS**

(Amended ~~November 7, 2018~~ July 10, 2019)

#### **PART “A”**

##### **OFFICIALS WHO MANAGE PUBLIC INVESTMENTS**

Officials who manage public investments as defined by 2 California Code of Regulation section 18700.3, are NOT subject to Omnitrans’ Conflict of Interest Code but must file disclosure statements under Government Code section 87200 et seq. [Regs. § 18730(b)(3)]

It has been determined that the positions listed below are officials who manage public investments<sup>1</sup>. These positions are listed here for informational purposes only.

Board of Directors and their Alternates

CEO/General Manager

Investment Consultant

---

<sup>1</sup> Individuals holding one of the above-listed positions may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe that their position has been categorized incorrectly. The Fair Political Practices Commission makes the final determination whether a position is covered by § 87200.



# DESIGNATED POSITIONS

## GOVERNED BY THE CONFLICT OF INTEREST CODE

<u>DESIGNATED EMPLOYEES'</u> <u>TITLE OR FUNCTION</u>	<u>DISCLOSURE CATEGORIES</u> <u>ASSIGNED</u>
Accounting Manager	1, 2
Accounting Services Supervisor	5
Administrative Officer	1
Application Developer	5
Application Manager	5
Application Specialist	5
Assistant Transportation Manager	5
<u>Business Intelligence Analyst</u>	<u>1</u>
Capital Project Services Manager	3, 5
Contracts Review Analyst	4
Contracts Manager	4
Contract Administrator (ALL)	4
Database Manager	5
Deputy General Manager	2, 4
Development Planning Manager	1, 2
Director of Finance	1, 2
Director of Human Resources	5
Director of Information Technology	5
Director of Internal Audit Services	4
Director of Maintenance	5
Director of Marketing/Planning	1, 2
Director of Operations	1
Director of Procurement	1
Director of Rail Operations	2, 5

**DESIGNATED EMPLOYEES'**  
**TITLE OR FUNCTION**

**DISCLOSURE CATEGORIES**  
**ASSIGNED**

Director of Safety & Regulatory Compliance	5
Director of Special Transit Services	2, 5
<u>Director of Strategic Development</u>	<u>1, 2</u>
Dispatch Supervisor	5
Employee Relations Manager	5
Environmental/Occupation Health & Safety Specialist	5
Facility Manager	3, 5
Facility Supervisor	5
Fleet Analyst (ALL)	5
General Counsel	1, 2
Human Resources Analyst	5
Human Resources Manager	5
Maintenance Manager	5
Maintenance Supervisor – Special Transportation Services	5
Marketing Manager	5
Marketing Specialist	5
Materials Manager	4
Network Administrator	5
Planner (All)	1, 2
Programs Administrator – Special Transportation Services	5
Purchased Transportation Administrator	5
Rail Compliance Officer	5
Safety and Security Regulatory Compliance Manager	5
Safety & Regulatory Compliance Specialist	5
Scheduling Analyst	5
Security & Emergency Preparedness Coordinator	5
Senior Financial Analyst	1, 2
Service Planning Manager	2, 5
Special Transportation Services Manager	5

**DESIGNATED EMPLOYEES'**  
**TITLE OR FUNCTION**

**DISCLOSURE CATEGORIES**  
**ASSIGNED**

Stops & Stations Supervisor	5
Systems Coordinator	5
Systems Engineer	5
Systems Specialist	5
Technical Services Manager	5
Transportation Manager	1
Treasury Manager	1
Warranty Coordinator	4

Consultants and New Positions<sup>2</sup>

---

<sup>2</sup> Individuals serving as a consultant as defined in FPPC Reg 18700.3 or in a new position created since this Code was last approved that make or participate in making decisions must file under the broadest disclosure set forth in this Code subject to the following limitation:

The CEO/General Manager may determine that, due to the range of duties or contractual obligations, it is more appropriate to assign a limited disclosure requirement. A clear explanation of the duties and a statement of the extent of the disclosure requirements must be in a written document. (Gov. Code §. 82019; FPPC Regs 18219 and 18734.). The CEO/General Manager's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code. (Gov. Code § 81008.)

## **PART “B”**

### **DISCLOSURE CATEGORIES**

The disclosure categories listed below identify the types of economic interests that the designated position must disclose for each disclosure category to which he or she is assigned.<sup>3</sup> “Investment” means financial interest in any business entity (including a consulting business or other independent contracting business) and are reportable if they are either located in, doing business in, planning to do business in, or have done business during the previous two years in the jurisdiction of Omnitrans.

Category 1: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments that are located in, do business in, or own real property within the jurisdiction of Omnitrans.

Category 2: All interests in real property which is located in whole or in part within, or not more than two (2) miles outside, the jurisdiction of Omnitrans, including any leasehold, beneficial or ownership interest, or option to acquire additional real property.

Category 3: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that are engaged in land development, construction or the acquisition or sale of real property within the jurisdiction of Omnitrans.

Category 4: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that provide services, products, materials, machinery, vehicles or equipment of a type utilized by Omnitrans.

Category 5: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that provide services, products, materials, machinery, vehicles or equipment of a type purchased or leased by the designated positions’ department, unit or division.

---

<sup>3</sup> This Conflict of Interest Code does not require the reporting of gifts from outside this agency’s jurisdiction if the source does not have some connection with or bearing upon the functions or duties of the position. (Reg. 18730.1)

LAW OFFICES OF  
BEST BEST & KRIEGER LLP

## **OMNITRANS CONFLICT OF INTEREST CODE**

**AMENDED JULY 10, 2019**

The Political Reform Act, (Gov. Code §81000 et seq.,) requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, (2 Cal. Code of Regs. §18730), that contains terms of a standard Conflict of Interest Code, which can be incorporated by reference in an agency's code. After public notice and hearing, the standard code may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This Incorporation Page, Regulation 18730 (attached) and the attached Appendix designating positions and establishing disclosure categories, shall constitute the Conflict of Interest Code of Omnitrans.

All officials and designated positions required to submit a statement of economic interests shall file their statements with the Executive Staff Assistant as Omnitrans' Filing Officer. The Executive Staff Assistant shall make and retain a copy of all statements filed by the Board of Directors, their Alternates and the General Manager and forward the originals of such statements to the Clerk of the Board of Supervisors of the County of San Bernardino. The Executive Staff Assistant shall retain the original statements filed by all other officials and designated positions and make all retained statements available for public inspection and reproduction during regular business hours. (Gov. Code § 81008.)

All officials and designated positions required to submit a statement of economic interests shall receive ethics training as required pursuant to Government Code section 53235 (AB 1234). The Filing Officer shall annually provide all filers with information on training available to meet the requirements of Section 53235, and maintain required records indicating the dates that filers satisfied the training requirements and the entity that provided the training. These records shall be retained for five years after the date of training and are public records subject to disclosure under the California Public Records Act. (Gov. Code § 53235.2.)

# **APPENDIX**

## **CONFLICT OF INTEREST CODE**

### **OF OMNITRANS**

(Amended July 10, 2019)

#### **PART “A”**

##### **OFFICIALS WHO MANAGE PUBLIC INVESTMENTS**

Officials who manage public investments as defined by 2 California Code of Regulation section 18700.3, are NOT subject to Omnitrans’ Conflict of Interest Code but must file disclosure statements under Government Code section 87200 et seq. [Regs. § 18730(b)(3)]

It has been determined that the positions listed below are officials who manage public investments<sup>1</sup>. These positions are listed here for informational purposes only.

Board of Directors and their Alternates

CEO/General Manager

Investment Consultant

---

<sup>1</sup> Individuals holding one of the above-listed positions may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe that their position has been categorized incorrectly. The Fair Political Practices Commission makes the final determination whether a position is covered by § 87200.

# DESIGNATED POSITIONS

## GOVERNED BY THE CONFLICT OF INTEREST CODE

<u>DESIGNATED EMPLOYEES'</u> <u>TITLE OR FUNCTION</u>	<u>DISCLOSURE CATEGORIES</u> <u>ASSIGNED</u>
Accounting Manager	1, 2
Accounting Services Supervisor	5
Administrative Officer	1
Application Developer	5
Application Manager	5
Application Specialist	5
Assistant Transportation Manager	5
Business Intelligence Analyst	1
Capital Project Services Manager	3, 5
Contracts Review Analyst	4
Contracts Manager	4
Contract Administrator (ALL)	4
Database Manager	5
Deputy General Manager	2, 4
Development Planning Manager	1, 2
Director of Finance	1, 2
Director of Human Resources	5
Director of Information Technology	5
Director of Internal Audit Services	4
Director of Maintenance	5
Director of Marketing/Planning	1, 2
Director of Operations	1
Director of Procurement	1

**DESIGNATED EMPLOYEES'**  
**TITLE OR FUNCTION**

**DISCLOSURE CATEGORIES**  
**ASSIGNED**

Director of Rail Operations	2, 5
Director of Safety & Regulatory Compliance	5
Director of Special Transit Services	2, 5
Director of Strategic Development	1, 2
Dispatch Supervisor	5
Employee Relations Manager	5
Environmental/Occupation Health & Safety Specialist	5
Facility Manager	3, 5
Facility Supervisor	5
Fleet Analyst (ALL)	5
General Counsel	1, 2
Human Resources Analyst	5
Human Resources Manager	5
Maintenance Manager	5
Maintenance Supervisor – Special Transportation Services	5
Marketing Manager	5
Marketing Specialist	5
Materials Manager	4
Network Administrator	5
Planner (All)	1, 2
Programs Administrator – Special Transportation Services	5
Purchased Transportation Administrator	5
Rail Compliance Officer	5
Safety and Security Regulatory Compliance Manager	5
Safety & Regulatory Compliance Specialist	5
Scheduling Analyst	5
Security & Emergency Preparedness Coordinator	5



**DESIGNATED EMPLOYEES'**  
**TITLE OR FUNCTION**

**DISCLOSURE CATEGORIES**  
**ASSIGNED**

Senior Financial Analyst	1, 2
Service Planning Manager	2, 5
Special Transportation Services Manager	5
Stops & Stations Supervisor	5
Systems Coordinator	5
Systems Engineer	5
Systems Specialist	5
Technical Services Manager	5
Transportation Manager	1
Treasury Manager	1
Warranty Coordinator	4

Consultants and New Positions<sup>2</sup>

---

<sup>2</sup> Individuals serving as a consultant as defined in FPPC Reg 18700.3 or in a new position created since this Code was last approved that make or participate in making decisions must file under the broadest disclosure set forth in this Code subject to the following limitation:

The CEO/General Manager may determine that, due to the range of duties or contractual obligations, it is more appropriate to assign a limited disclosure requirement. A clear explanation of the duties and a statement of the extent of the disclosure requirements must be in a written document. (Gov. Code §. 82019; FPPC Regs 18219 and 18734.). The CEO/General Manager's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code. (Gov. Code § 81008.)

## **PART “B”**

### **DISCLOSURE CATEGORIES**

The disclosure categories listed below identify the types of economic interests that the designated position must disclose for each disclosure category to which he or she is assigned.<sup>3</sup> “Investment” means financial interest in any business entity (including a consulting business or other independent contracting business) and are reportable if they are either located in, doing business in, planning to do business in, or have done business during the previous two years in the jurisdiction of Omnitrans.

Category 1: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments that are located in, do business in, or own real property within the jurisdiction of Omnitrans.

Category 2: All interests in real property which is located in whole or in part within, or not more than two (2) miles outside, the jurisdiction of Omnitrans, including any leasehold, beneficial or ownership interest, or option to acquire additional real property.

Category 3: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that are engaged in land development, construction or the acquisition or sale of real property within the jurisdiction of Omnitrans.

Category 4: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that provide services, products, materials, machinery, vehicles or equipment of a type utilized by Omnitrans.

Category 5: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that provide services, products, materials, machinery, vehicles or equipment of a type purchased or leased by the designated positions’ department, unit or division.

---

<sup>3</sup> This Conflict of Interest Code does not require the reporting of gifts from outside this agency’s jurisdiction if the source does not have some connection with or bearing upon the functions or duties of the position. (Reg. 18730.1)

ITEM # E5

**DATE:** July 10, 2019

**TO:** Board Chair David Avila and Members of the Omnitrans Board of Directors

**THROUGH:** P. Scott Graham, CEO/General Manager

**FROM:** Jeremiah Bryant, Director of Strategic Development

**SUBJECT: COOPERATIVE AGREEMENT WITH CITY OF ONTARIO –  
TRANSFORMATIVE CLIMATE COMMUNITIES GRANT**

### **FORM MOTION**

Authorize the CEO/General Manager to enter into a Cooperative Agreement with the City of Ontario, which establishes Omnitrans' roles and responsibilities in the pass-through of \$3,628,523.10 of Transformative Climate Communities (TCC) grant funds from the City to Omnitrans.

*This agreement has been reviewed and approved by Omnitrans legal counsel.*

*This item was reviewed by the Administrative and Finance Committee at its June 13, 2019 meeting and recommended to the Board of Directors for approval.*

### **BACKGROUND**

On November 1, 2017, the Omnitrans Board of Directors approved a Memorandum of Understanding (MOU) between the City of Ontario and Omnitrans, which established the roles and responsibilities of Omnitrans as a partner on the City's Transformative Climate Communities (TCC) grant application to the State of California.

The City applied for the Transformative Climate Communities grant and was successful. A master grant agreement was executed between the City and the State in March 2019.

Omnitrans' role as a partner on the TCC grant-funded project is to provide the following:

- Purchase two new near-zero-emission buses and implement increased frequency on Route 83 (from 60-minute to 30-minute frequency during peak times) for three years;
- Purchase and install five premium bus shelters and five standard green bus shelters at designated locations within the project area in Ontario; and
- Provide two travel training programs for residents;

All above-listed activities will begin in 2020 and will be fully reimbursed by the TCC grant. Omnitrans is not contributing any matching funding to the grant. The cooperative agreement outlines the process for the pass-through of \$3,628,523.10 to Omnitrans from the TCC grant funds to cover the costs of the above-listed activities and Omnitrans' administrative costs. The cooperative agreement outlines Omnitrans' responsibilities for invoicing and progress reporting for the grant-funded activities, which are based upon the requirements in the master agreement between the State of California and the City of Ontario for the grant funds.

Strategic Initiatives supported:

- Service and Operations Goal, Strategy 1.1 Introduce new service modes and/or adjust service to address needs of non-riders;
- Marketing Goal, Strategy 1.3 Develop partnerships with businesses and organizations that Omnitrans serves, and Strategy 3.1 Improve passenger amenities.

## **CONCLUSION**

Authorize the CEO/General Manager to enter into a Cooperative Agreement with the City of Ontario, which establishes Omnitrans' roles and responsibilities in the pass-through of \$3,628,523.10 of Transformative Climate Communities (TCC) grant funds from the City to Omnitrans.

PSG: JB: AMJ

ITEM #           E6          

**DATE:** July 10, 2019

**TO:** Board Chair David Avila and Members of the Omnitrans Board of Directors

**THROUGH:** P. Scott Graham, CEO/General Manager

**FROM:** Suzanne Pfeiffer, Director of Human Resources

**SUBJECT: POLICY 701 SUBSTANCE ABUSE (ALCOHOL, DRUGS AND NARCOTICS) UPDATES**

**FORM MOTION**

Approve Policy 701 Substance Abuse (Alcohol, Drugs and Narcotics) Updates.

*This item was reviewed by the Administrative and Finance Committee at its June 13, 2019 meeting and recommended to the Board of Directors for approval.*

**BACKGROUND**

The Department of Transportation (DOT) requires that all agencies receiving federal funding establish a program to prevent accidents, injuries, and fatalities resulting from the misuse of alcohol and use of prohibited drugs by employees who perform safety-sensitive functions. Further, as an agency receiving federal funding we are required to comply with the Drug – Free Workplace Act of 1988. Policy 701 addresses both of these requirements.

In summary, the updated policy includes the following:

- Language to comply with FTA requirements regarding the types of drugs that are tested and expand *opiates* to *opioids* to include both natural and synthetic (and semi-synthetic) forms of the drug.
- Elimination of the requirement for employees to self-identify prescription and over the counter medications to the Agency putting the responsibility into the hands of the employee's treating physician to determine the impacts on performance of duties.
- Elimination of an Agency requirement to drug test based on estimated accident damages exceeding \$5,000. This Agency imposed limitation causes unnecessary drug and alcohol testing because it does not take into account whether the employee's performance can be

- completely discounted as a contributing factor. Language regarding this is included in the post-accident section of the policy.
- Deleting several appendices. Many of the appendices are not required by the DOT and are administrative in nature. While we still provide this information to employees in other forms, deleting these will allow for updates to be made to the appendices without Board of Directors approval.
- Update contact information.

*Based on feedback from the Administrative and Finance Committee regarding the elimination of the \$5,000 accident level for post-accident testing, staff will provide data on the number of tests completed before and after the policy change. Data will be collected, and an update will be provided in 6 months. The policy change is not expected to reduce the number of tests as there is usually another reason for post-accident testing, other than the anticipated cost of the accident.*

### **FUNDING SOURCE**

N/A

### **CONCLUSION**

Staff recommends that the Board of Directors approve Policy 701 Substance Abuse (Alcohol, Drugs and Narcotics) updates.

PSG: SP

Attachments: A. Policy 701 – Redline  
B. Policy 701 – Clean



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 1 OF 28

## SUBJECT

**Substance Abuse  
(Alcohol, Drugs & Narcotics)  
Drug and Alcohol Policy**

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: ~~September 4, 2013~~ July 10, 2019

I. Purpose

The purpose of this policy is to establish a program to comply with the requirements of 49 CFR Parts 40 and 655, as amended, and is designed to help prevent accidents, injuries, and fatalities resulting from the misuse of alcohol and use of prohibited drugs by employees who perform safety-sensitive functions.

Omnitrans is dedicated to providing safe, dependable and economical transportation services to our transit system passengers. The Federal Transit Administration (FTA) has specifically noted the use of alcohol and ~~illegal-prohibited~~ drugs have been demonstrated to significantly affect the performance of individuals in the mass transportation industry. Omnitrans employees are our most valuable resource and it is our goal to provide a healthy, satisfying working environment, which promotes personal opportunities for growth. In meeting these goals, it is our policy to (1) assure employees are not impaired in their ability to perform assigned duties in a safe, productive, and healthy manner; (2) create a workplace environment free from the adverse ~~affects- effects~~ of drug and alcohol substance abuse or misuse; (3) prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances; and (4) to encourage employees to seek professional assistance ~~anytime for~~ personal problems, including alcohol or drug dependency, ~~that may~~ adversely affect their ability to perform their assigned duties.

The purpose of this policy is to ~~assure- ensure~~ worker fitness for duty and to protect our employees, passengers, and the public from the risks posed by the use of alcohol and prohibited drugs. ~~The Agency has developed and implemented a drug and alcohol testing program designed to help prevent accidents and injuries resulting from the misuse of alcohol and illegal prohibited drugs by employees who perform safety-sensitive functions. While it is difficult to estimate the precise cost to society from alcohol misuse, there is no doubt that the cost is enormous.~~ The potential side effects of alcohol misuse are substantial in absenteeism, increased health care costs, etc. This program will also help discourage substance abuse, and ~~operate serve~~ as a deterrent to those individuals who might be tempted to try drugs for the first time or who currently use drugs. Finally, ~~we believe~~ this program ~~will enhance~~s the safety of our employees and the ~~users of mass transportation-public~~ by fostering the early identification and referral for treatment of workers with alcohol or drug abuse problems.

This policy is also intended to comply with all applicable Federal regulations governing workplace anti-drug programs in the transit industry. The Federal Transit Administration (FTA) of the U. S. Department of Transportation has published 49



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 2 OF 28

### SUBJECT

**Substance Abuse  
(Alcohol, Drugs & Narcotics)  
Drug and Alcohol Policy**

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: ~~September 4, 2013~~ July 10, 2019

CFR Part 655, as amended, that mandates urine drug testing and breath alcohol testing for safety-sensitive functions and prevents performance of safety-sensitive functions when there is a positive test result. The U. S. Department of Transportation (DOT) has also enacted 49 CFR part 40 that sets standards for the collection and testing of urine and breath specimens. In addition, the Federal government published 49 CFR Part 32, "The Drug-Free Workplace Act of 1988," which requires the establishment of drug-free workplace policies and the reporting of certain drug-related offenses to the FTA. This policy incorporates those requirements for safety-sensitive employees and others when so noted.

All provisions set forth in **bold face print** are ~~included~~ consistent with requirements set forth in 49 CFR Part 40 and Part 655, as amended. All other provisions are set forth under the authority of the Agency.

## II. Scope

**This policy applies to all safety-sensitive and non-safety-sensitive Agency applicants, transferees, employees, ~~paid part-time employees~~, contracted employees, and contractors** when they are on transit property or **when performing any transit related safety-sensitive or non-safety-sensitive business**. Visitors, vendors, and contractor employees are governed by this policy while on transit premises and will not be permitted to conduct transit business if found to be in violation of this policy.

### A. For purposes of this policy "safety-sensitive function" includes:

1. **Operating a revenue service vehicle, including when not in revenue service;**
2. **Operating a non-revenue vehicle, when required to be operated by a holder of a Commercial Driver's License;**
3. **Controlling dispatch ~~or~~ movement of a revenue service vehicle;**
4. **Maintaining a revenue service vehicle or equipment used in revenue service, or**
5. **Carrying a firearm for security purposes.**

**An individual will be considered to be performing a safety-sensitive function during any period in which he/she is actually performing, ready- to perform or immediately available to perform such functions. ~~Supervisors who may also perform safety-sensitive functions will be considered covered employees by this policy.~~**





## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 3 OF 28

### SUBJECT

**Substance Abuse  
(Alcohol, Drugs & Narcotics)  
Drug and Alcohol Policy**

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: ~~September 4, 2013~~ July 10, 2019

Appendix A lists Safety-Sensitive job ~~titles-classifications~~ at Omnitrans.

### B. Contractors

This policy also applies to recipients of FTA assistance as defined in 49 CFR Part 655, as well **as** other entities that provide mass transportation services or perform safety-sensitive functions for such recipients or entities, including subrecipients, operators and contractors. Contractors subject to the requirements of the regulations include persons or organizations that provide services for the Agency consistent with a specific understanding or arrangement that reflects an ongoing relationship between the parties. The Agency will ensure that any contractors who perform safety-sensitive functions within the scope of this policy and the regulations certify their compliance with the requirements of 49 CFR Part 655.

### III. Procedure

#### A. Prohibited Substances

##### 1. Alcohol

**Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol. "Alcohol use" means the consumption of any beverage, mixture, or preparation, including any medication, which contains alcohol. "Alcohol concentration" (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.**

##### 2. Illegally Used Controlled Substances or Drugs

**Although this policy prohibits the use of any controlled substances not lawfully prescribed by a physician, any drug test required under this policy will analyze an individual's urine to test for the presence of marijuana, cocaine, ~~opiates, opioids~~, amphetamines and phencyclidine. ~~The use of these five drugs is always illegal~~ Consumption of these products is prohibited at all times. Therefore, safety-sensitive employees may be tested at any time while on duty.**

~~Appendix B indicates cut off levels for the initial and confirmatory tests.~~

##### 3. Prescription ~~Medications & Non-Prescription (Over-the-Counter Drug Use)~~



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 4 OF 28

### SUBJECT

#### **Substance Abuse (Alcohol, Drugs & Narcotics) Drug and Alcohol Policy**

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: ~~September 4, 2013~~ July 10, 2019

~~While the use of legally prescribed drugs and non-prescription medications is are not prohibited, employees must understand they have a responsibility to notify their supervisor if they are taking any medication which indicates that mental functioning, motor skills, or judgment may be adversely affected.~~

~~A legally prescribed drug is one written for you by a licensed physician and it includes the patient's name, the name of the medication, quantity/amount to be taken, and the period of authorization. The safety-sensitive employee is required to complete and have their physician complete the Safety-Sensitive Employee Prescription Drug Use Form (Appendix K). If the employee is taking any non-prescribed over-the-counter medications, the employee must also notify their supervisor by completing the Safety-Sensitive Employee Non-Prescription Form (Over-the-Counter Medications Only) (Appendix L).~~

~~The misuse or abuse of legal drugs while performing transit business is prohibited and subject to disciplinary action, up to and including termination of employment.~~ **An individual will be allowed to list on the back of the donor copy of the Urine Custody and Control Form, any prescribed medication that he/she may be taking or may have recently taken.**

### B. Conditions of Employment

**Participation in Omnitrans drug and alcohol testing program is a requirement of each safety-sensitive and non-safety sensitive employee and, therefore is a condition of employment. Covered employees are also prohibited from refusing to submit to a required substance abuse test as outlined by this policy.**

#### 1. Prohibited Conduct

##### a. Manufacture, Trafficking, Possession, and Use.

**Any employee engaging in the manufacture, distribution, dispensing, possession, or use of prohibited substances** on Omnitrans premises, **in transit vehicles**, in uniform, or while on Omnitrans business will be subject to termination. Law enforcement shall be notified, as appropriate, where criminal activity is suspected.

##### b. Impairment

**Any safety-sensitive or non-safety sensitive employee who is reasonably suspected of being impaired by a prohibited substance, or not fit for duty shall be suspended from job duties pending an investigation and verification of condition. Employees found to be impaired by prohibited substances or who fail to pass a drug or alcohol test shall be removed**



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 5 OF 28

### SUBJECT

**Substance Abuse  
(Alcohol, Drugs & Narcotics)  
Drug and Alcohol Policy**

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: ~~September 4, 2013~~ July 10, 2019

from duty and subject to termination. A drug or alcohol test is considered positive if the individual is found to have a quantifiable presence of a prohibited substance in the body above the minimum thresholds defined in 49 CFR Part 40, as amended.

#### c. Alcohol Use

Agency and the Federal Transit Administration Regulations prohibit the following conduct as it relates to alcohol use:

- 1) No safety-sensitive or non-safety-sensitive employee should report for duty or remain on duty when his/her ability to perform assigned functions is adversely affected by alcohol or when his/her blood alcohol concentration is 0.04 or greater.
- 2) No employee shall have used alcohol within four hours of reporting for duty.
- 3) No employee shall use alcohol while performing safety-sensitive functions, or just before or just after performing a safety-sensitive function.
- 4) No employees shall use alcohol during the hours they are on call.
- 5) No safety-sensitive employee shall use alcohol for eight hours following an accident, unless the employee has first undergone a post-accident alcohol test.

Violation of these provisions is prohibited, and will make the employee subject to disciplinary action up to and including termination.

#### 2. Notifying the Transit System of Criminal, Alcohol and/or Drug Conviction

Any employee who fails to notify Omnitrans in writing within five (5) days of any criminal, alcohol and/or drug statute conviction shall be subject to disciplinary action up to and including termination. Omnitrans will then report the conviction as stated above to the FTA Regional Counsel within ten (10) calendar days.

#### 3. Compliance with Testing Requirements

All safety-sensitive and non-safety-sensitive employees will be subject to urine drug testing and breath alcohol testing. Any employee who refuses to comply with a request for testing, who provides false information in connection with a test, or who attempts to falsify test results through tampering, contamination, adulteration, or substitution shall be removed from duty immediately, and be subject to dismissal proceedings. Refusal can include an inability to provide a urine specimen or breath sample without a



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 6 OF 28

### SUBJECT

**Substance Abuse  
(Alcohol, Drugs & Narcotics)  
Drug and Alcohol Policy**

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: ~~September 4, 2013~~ July 10, 2019

**valid medical explanation, as well as a verbal declaration, obstructive behavior, or physical absence resulting in the inability to conduct the test.**

#### 4. Self Identification and Rehabilitation

It is Omnitrans policy to encourage employees to identify and detect their alcohol and substance abuse problems, and to enter a rehabilitation program. Accordingly, the Agency will allow employees, with a minimum of one year's service, one opportunity to enter a rehabilitation program if they identify themselves before Agency detection of the problem, or the occurrence of a situation that may result in a requirement to undergo urine and breath testing.

#### 5. Proper Application of the Policy

Omnitrans is dedicated to ~~assuring-ensuring~~ fair and equitable application of this ~~substance-abuse~~ policy. Therefore, all supervisory employees are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisory employee who knowingly disregards the requirements of this policy, or who is found to deliberately misuse, or neglect to enforce the policy in regard to subordinates, shall be subject to disciplinary action up to and including termination.

### C. TESTING CIRCUMSTANCES

Analytical urine drug testing and breath testing for alcohol may be conducted when circumstances warrant or as required by Federal regulations. **All safety-sensitive and non-safety-sensitive employees shall be subject to testing prior to employment (post offer) or transfer to safety-sensitive positions, for reasonable suspicions/probable cause, fit for duty medical examination (post 90 day return from leave), and following an accident. Those employees who perform the safety-sensitive job listed in Appendix A to this policy shall also be subject to testing on a random, unannounced basis.**

**Before performing any alcohol or drug test required by this policy, the Agency will notify the test subject the test is being required pursuant to this policy and/or Federal Transit Administration Regulations (49 CFR Part 655). The Agency will not represent that any requested test is required by federal regulations if, in fact, the individual to be tested is not subject to those regulations.**

#### 1. Pre-employment Testing

**All safety-sensitive and non-safety-sensitive position applicants shall undergo urine drug testing prior to (post offer) employment. Receipt by Omnitrans of negative test result is required prior to beginning safety-**



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 7 OF 28

### SUBJECT

**Substance Abuse  
(Alcohol, Drugs & Narcotics)  
Drug and Alcohol Policy**

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: ~~September 4, 2013~~ July 10, 2019

sensitive duties. All employees being transferred from a non-safety-sensitive function to a safety-sensitive function will also be required to have a negative pre-employment drug test result prior to beginning any safety-sensitive function. The test must be performed within 90 days of beginning any safety-sensitive duties. If a test is cancelled for any reason, the employee or applicant must retake and have a negative result prior to being hired or beginning any safety-sensitive function. Failure of a drug test will disqualify an applicant for employment for a period of two (2) years.

Omnitrans will obtain written consent from applicants to request information from previous DOT regulated employers that had employed the individual within the previous two years. If the applicant does not provide consent, he/she may not perform any safety-sensitive functions.

Pursuant to Section 655.41(a)(2), all applicants and/or employees of safety-sensitive positions will be asked during the oral interview portion of the selection process if they have ever failed or refused a DOT pre-employment drug test including requiring evidence that the applicant and/or employee has successfully completed a referral, evaluation and treatment plan.

An employee who has not performed a safety-sensitive duty for 90 consecutive days or more and has not been in the random selection pool shall take a pre-employment physical examination that includes a DOT drug test with a verified negative result before returning to safety-sensitive duties.

### 2. Reasonable Suspicion Testing

**All safety-sensitive and non-safety-sensitive employees may be subject to a fitness for duty evaluation, to include appropriate urine and/or breath testing when there are reasons to believe that drug or alcohol use is adversely affecting job performance including, but not limited to, any employee suspected of possessing, using or being impaired by alcohol or an illegal drug, a legal drug if such use would violate this Policy or pose a safety threat, while on duty and/or in Agency uniform.**

**A reasonable suspicion referral for testing must be based upon specific, contemporaneous, articulate observations concerning appearance, behavior, speech, or body odors of the covered safety-sensitive and non**



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 8 OF 28

### SUBJECT

**Substance Abuse  
(Alcohol, Drugs & Narcotics)  
Drug and Alcohol Policy**

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: ~~September 4, 2013~~ July 10, 2019

safety-sensitive employee consistent with possible drug use or alcohol misuse. These observations will only be made by one supervisor who has received appropriate training in detecting the signs and symptoms of drug and alcohol use and will be documented by that individual on a "Reasonable Suspicion – Individual Test Summary" ~~(Appendix J)~~. A reasonable suspicion alcohol test will only be required if the reasonable suspicion observations are made just before, during or **just** after the period of the work day that the covered employee is required to be in compliance with this policy.

If the reasonable suspicion alcohol test is not administered within two (2) hours following the reasonable suspicion determination, the Agency will document the reasons why the test was not promptly administered. If the test is not administered within eight (8) hours following the reasonable suspicion determination, the Agency will no longer attempt to administer an alcohol test and will document the reasons for its inability to do the test.

In any reasonable suspicion testing circumstance, an Agency representative will transport the individual to the collection facility and await the completion of the collection procedure. The Agency representative will then transport the individual back to the Agency's premises where a family member or designated individual will be contacted to transport the individual from the premises. In the event no such individual is available, the Agency will ~~contact a taxi to make arrangements to~~ transport the employee home. ~~The Any associated costs for post-testing transportation of the taxi~~ will be reimbursed to the individual if the reasonable suspicion test result is negative. If the individual refuses to comply with any of these procedures and attempts to operate his/her own vehicle, the Agency will take appropriate efforts to discourage him/her from doing so, up to and including contacting local law enforcement officials. Any employee failing to cooperate with any of the above procedures will be subject to disciplinary action, up to and including termination.

**Any safety-sensitive ~~or non-safety-sensitive~~ employee may not be assigned to a safety-sensitive function until a negative result has been received. An employee receiving a negative result shall be promptly returned to his/her former duties.** While awaiting test result(s), employees will be put on paid administrative leave.

### 3. Post-Accident Testing





## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 9 OF 28

### SUBJECT

**Substance Abuse  
(Alcohol, Drugs & Narcotics)  
Drug and Alcohol Policy**

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: ~~September 4, 2013~~ July 10, 2019

a) **Safety-sensitive or non-safety sensitive employees will be required to undergo alcohol and drug testing if they are involved in an accident while operating an Omnitrans vehicle (regardless of whether or not the vehicle is in revenue service), if as a result of the accident:**

- 1) An individual dies;
- 2) An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident;
- 2)3) **There is any disabling damage to any vehicle involved in the accident, requiring the vehicle to be towed away from the scene**

With respect to an occurrence in which the mass transit vehicle involved a bus, electric bus, van or automobile, one or more vehicles incurs disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle. Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs, including damage to motor vehicles that could have been driven, but would have been further damaged if so driven. Disabling damage does not include damages which can be remedied temporarily at the scene of the accident without special tools or parts, tire disablement without other damage (even if no spare tire is available), headlamp or taillight damage, or damage to turn signals, horn or windshield wipers which makes them inoperative; ~~or The total damage caused by the accident is estimated to exceed \$5,000.00.~~

A post-accident test will be conducted on all surviving covered employees whose performance could have contributed to the accident, as determined by the Agency using the best information available at the time of the decision.

~~Post-accident testing is stayed while the employee assists in the resolution of the accident or receives medical attention following the accident.~~ In the event following an accident, an alcohol test is not administered within two (2) hours; the Agency will prepare and maintain record stating the reasons why the test was not promptly administered. The employee will be tested for alcohol within eight (8) hours of the accident, or the Agency will make no further effort to administer and will document the reasons why the test was not administered within eight (8) hours. In the event a drug test is not administered within 32 hours following an accident, the Agency will cease its attempts to administer further drug testing. Any employee involved in an accident must refrain from alcohol use for eight hours following the accident or until he/she undergoes a post-accident alcohol test. Any employee who leaves the scene of the accident



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 10 OF 28

### SUBJECT

**Substance Abuse  
(Alcohol, Drugs & Narcotics)  
Drug and Alcohol Policy**

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: ~~September 4, 2013~~ July 10, 2019

without appropriate authorization prior to submission to drug and alcohol testing will be considered to have refused the test. Employees tested under this provision will include not only the operations personnel, but any other covered employee whose performance could have contributed to the accident.

- b) The Post-Accident Individual Test Summary form (~~Appendix I~~) shall be used by the supervisor to ensure that proper procedure is followed in post-accident drug and alcohol testing. This form will be identified with an identification number that corresponds with accident records. The form will be kept as part of the testing records.
  - c) Testing will not be required after non-fatal accidents if the Agency determines, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accident and that the employee's performance could not have contributed to the accident.
4. Random Testing
- Any safety-sensitive employees subject to the Federal Transit Administration guidelines of this policy will be required to submit to random drug and alcohol testing. The Agency will conduct random drug and alcohol tests at no less than the minimum annual percentage rate as required by the FTA. ~~The current minimum annual percentage rates are located in Appendix C.~~

The random selection process is completely objective and anonymous and utilizes a scientifically valid method using a computer-based random number generator matched with a random number assigned to the employee's social security number. The tests will be unannounced and the dates for the tests will be reasonably spread throughout the course of the calendar year and occur throughout the work shift. All employees will have an equal chance of being tested each time selections are made, regardless of the number of his/her previous selections, if any.

Any covered employee notified of his/her selection for random testing will be required to proceed immediately to the test site. If a covered employee is performing a safety-sensitive function at the time of notification of the random test requirement, he/she will be required to cease performing the safety-sensitive function and proceed to the





## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 11 OF 28

### SUBJECT

**Substance Abuse  
(Alcohol, Drugs & Narcotics)  
Drug and Alcohol Policy**

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: ~~September 4, 2013~~ July 10, 2019

testing site as soon as possible. Covered employees will only be required to submit to a random alcohol test if they are performing a safety-sensitive function, about to perform a safety-sensitive function, or have just ceased performing a safety-sensitive function.

#### 5. Refusal to Submit

Any covered employee who refuses to submit to an alcohol or drug test will be prohibited from performing or continuing to perform a safety-sensitive function and be subject to termination. "Refusal to submit" to an alcohol or drug test constitutes a positive result, a violation of this policy, and includes the following conduct:

- a. Failing to provide adequate breath for alcohol testing, without a valid medical explanation after an individual has received notice of a required breath test;
- b. Failing to provide an adequate urine sample for drug testing, without a genuine inability to provide a specimen (as determined by a medical evaluation), after an individual has received notice of a required urine test;
- c. Engaging in conduct that clearly obstructs the testing process, including the failure or refusal to sign any document or form required under this policy or by any party authorized to carry out testing under this policy;
- d. Failing to remain readily available for testing, including notifying the Agency of his/her location if he/she leaves the scene of the accident, when an individual is involved in an accident as defined in this policy; and
- e. Failure of the employee to report to the collection/testing site in a timely manner, as defined by Omnitrans, once notification is given without a reasonable excuse for a required test (except for a pre-employment test).
- f. Leaving a collection facility prior to a test completion (except in a pre-employment test where leaving before the test begins is not considered a test refusal).
- g. Failure to permit an observed or monitored collection when required.



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 12 OF 28

### SUBJECT

**Substance Abuse  
(Alcohol, Drugs & Narcotics)  
Drug and Alcohol Policy**

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: ~~September 4, 2013~~ July 10, 2019

- h. Failure to take a second test when required (i.e. a cancelled test).
- i. Failure to undergo a medical exam when required.
- j. For an observed collection, failure to follow the observer's instructions to raise clothing above the waist, lower clothing and underpants and turn around.
- k. Possessing or wearing a prosthetic or other device that could be used to interfere with the collection process.
- l. Admitting to the adulteration or substitution of a specimen to the collector or MRO.
- m. MRO's verification of a test as adulterated or substituted constitutes a refusal.

### D. ALCOHOL TESTING METHODOLOGIES

#### 1. Alcohol Testing Personnel

##### a) Breath Alcohol Technician

**All alcohol testing required under this policy will be carried out by a breath alcohol technician ("BAT") trained to proficiency in the operation of the evidential breath testing device ("EBT") being used by the Agency for alcohol testing and in the alcohol testing procedures required herein. The BAT will be required to successfully complete a course of instruction that meets the standards of the National Highway Traffic Safety Administration (NHTSA) model course and documents that the BAT has demonstrated competence in the operation of the specific EBT being used by the Agency.**

##### b) Screening Test Technician (STT)

**Anyone qualified to act as a Breath Alcohol Technician may act as a Screening Test Technician (STT), provided that he/she has demonstrated proficiency in the operation of the non-evidential screening device to be used by that individual. Any other individual may act as an STT as long as he or she successfully completes the Department of Transportation model course, or a course of instruction determined by the Department of Transportation's Office of Drug and Alcohol Policy Compliance to be equivalent to it.**



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 13 OF 28

### SUBJECT

**Substance Abuse  
(Alcohol, Drugs & Narcotics)  
Drug and Alcohol Policy**

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: ~~September 4, 2013~~ July 10, 2019

### 2. Alcohol Testing Device

- a) **Evidential Breath Testing Device** for the evidential testing of alcohol is listed in the "Conforming Products List (CPL) of Evidential Breath Measurement Devices." For confirmatory breath tests, the Agency will use an EBT that is capable of providing a printed result of each breath test in triplicate (or three consecutive identical copies). This device will be capable of assigning a unique and sequential number to each completed test. The EBT will also be able to distinguish alcohol from acetone at the 0.02 alcohol concentration level and be capable of testing an air blank prior to each collection of breath and performing an external calibration check.
- b) In order to be used for any alcohol testing under this policy, the EBT ~~and~~ must have a quality assurance plan (QAP) developed by the manufacturer and approved by National Highway Traffic Safety Administration (NHTSA). The Agency or its designated agent will ensure compliance with the QAP for each EBT it uses for alcohol testing under this policy.

### 3. Alcohol Testing Site

- a) **The Agency will use an alcohol testing site that affords visual and aural privacy to the individual being tested sufficient to prevent unauthorized persons from seeing or hearing test results. The alcohol testing site will be secure, and no unauthorized persons will be permitted access to it at any time when testing is being conducted or when the EBT remains unsecured. Alcohol testing will take place at locations designated by the Agency.**
- b) In unusual circumstances (e.g., when it is essential to conduct a test outdoors at the scene of an accident) a test may be conducted at a place other than a designated testing facility, but the Agency or the BAT will ensure that visual and aural privacy will be provided to the greatest extent practicable.

### 4. The Breath Alcohol Testing Form

- a) **The Agency will use a Breath Alcohol Testing Form prescribed by the Department of Transportation for EBT alcohol screening devices.**

## E. ALCOHOL TESTING PROCEDURES



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 14 OF 28

### SUBJECT

**Substance Abuse  
(Alcohol, Drugs & Narcotics)  
Drug and Alcohol Policy**

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: September 4, 2013 July 10, 2019

#### 1. Screening and Confirmation Testing

All alcohol testing conducted under this policy will be done in accordance with the procedures outlined in 49 CFR Part 40, Subpart L. After providing photo identification to the BAT or STT, the employee and the BAT/STT will complete the Breath Alcohol Testing Form. Any employee who refuses to sign the acknowledgment of testing in Step 2 of the form will be considered to have refused to test. The employee will follow the BAT/STT's instructions and provide a breath sample for the initial test. If the result of the test is  $<0.02$  alcohol concentration, the test is considered negative and the process is complete. The BAT/STT will complete and sign the breath alcohol testing form.

If the initial alcohol test result is 0.02 or greater, a confirmation test, using an EBT capable of printing the test results, will be conducted. After a waiting period of at least 15 minutes, during which the employee is observed and requested not to take anything by mouth or to the extent possible, not to belch during the waiting period; the employee will be asked to provide a breath sample.) The confirmation test will be completed within 30 minutes of the completion of the screening test. The purpose of the waiting period is to ensure that no residual mouth alcohol is present for the confirmation test. If the confirmation test result is  $>0.02$ , the BAT will immediately notify the Agency representative, and the employee will remain at the testing facility until provided transportation home. The employee and the BAT will complete and sign the breath alcohol testing form and a copy of the form, including the test results, will be provided to the employee.

#### 2. Inability to Provide a Sample

The employee will be asked to submit to a breath alcohol test. If the employee is unable to provide, or alleges he/she is unable to provide a breath sufficient to permit a valid breath test because of a medical condition, the BAT/STT shall again instruct the employee to provide an adequate amount of breath. If the employee cannot provide an adequate breath sample, the BAT/STT shall discontinue the testing process, notify the Agency representative, and the employee shall, as soon as practical, be evaluated by a physician, designated by the Agency. The physician shall determine if there is a medical condition or diagnosis that prevents the employee from providing an adequate breath sample. If the physician is unable to document a medical condition or diagnosis responsible for the employee's failure to provide an adequate sample, it is considered a refusal to test.



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 15 OF 28

### SUBJECT

**Substance Abuse  
(Alcohol, Drugs & Narcotics)  
Drug and Alcohol Policy**

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: ~~September 4, 2013~~ July 10, 2019

#### 3. Invalid Alcohol Test Results

Alcohol results  $>0.02$  on the confirmation test are deemed invalid if certain critical errors or omissions occur in the testing process. The reasons for invalidation of a test result include: failure of the EBT/STT on the next external calibration check; less than 15 minutes elapsed between screening and conformation; omission of or failure on an air blank before the confirmation test; failure of the BAT/STT to sign the Breath Alcohol Testing Form; no printed EBT result; or the BAT/STT's failure to note employee's refusal to sign the final certification statement in step 4 of the Breath Alcohol Testing Form; the sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result. If an event occurs during the testing process, or an error is discovered, that would invalidate a confirmation test result, the employee shall be subject to repeat the testing process, if practical.

#### 4. Refusal to Test

For purposes of alcohol testing, the following are considered refusals to test:

- a) The employee refuses to sign Step 2 of the Breath Alcohol Testing Form
- b) The employee refuses to attempt to provide a sample
- c) The employee fails to cooperate with the testing process
- d) The employee is unable or unwilling to provide an adequate breath sample and the examining physician does not find a medical condition or diagnosis that prevents the employee from providing the sample
- e) The employee fails to remain readily available for testing following an accident as defined in this policy.
- f) The employee fails to report to the collection/testing site for a required test in a timely manner, as defined by Omnitrans, once notification is given without a reasonable excuse.
- g) Failure to submit to a medical examination when required.
- h) Any employee who is deemed to have "refused to test" will be immediately removed from performing safety sensitive functions as defined by the FTA rules (49 CFR Part 655). The "refusal to test" constitutes a positive result. The Agency will impose disciplinary action as outlined in this policy.

### F. CONTROLLED SUBSTANCE ABUSE TESTING METHODOLOGIES



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 16 OF 28

### SUBJECT

**Substance Abuse  
(Alcohol, Drugs & Narcotics)  
Drug and Alcohol Policy**

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: ~~September 4, 2013~~ July 10, 2019

#### 1. Laboratory Analysis

All urine specimens tested for drugs of abuse under this policy will be analyzed at a laboratory certified by the Department of Health and Human Services (DHHS), Substance Abuse and Mental Health Services Administration (SAMHSA). ~~The laboratory selected by the Agency for testing conducted under this policy is listed at Appendix D.~~

#### 2. Initial Screening

All specimens will be tested for the drug or drug classes listed below using an immunoassay screen approved by the Food and Drug Administration (FDA). The immunoassay screen will use cut-off levels established by the DHHS to eliminate negative specimens from further consideration. Any initially positive test will be subject to confirmation through an additional, more precise testing methodology.

#### 3. Confirmatory Tests

-Any urine specimen identified as positive on the initial screen will be confirmed by a second analytical procedure which uses a different chemical technique and procedure. Gas chromatography/mass spectrometry (GC/MS) methodology will be used to conduct the confirmation analysis. GC/MS analysis will use cut-off levels established by the DHHS for confirmation. Any specimen that does not contain drug or drug metabolites above the GC/MS confirmation cut-off levels will be reported by the laboratory as negative.

#### 4. Specimen Adulteration/Dilution

-When appropriate the laboratory may conduct analyses to determine if the specimen has been adulterated. Adulteration tests include, but are not limited to, specific gravity, creatinine, and pH. In addition, the laboratory may conduct additional analyses to identify or detect a specific adulterant added to the urine specimen. If the laboratory identifies an adulterant added to the specimen, the laboratory will report the specimen as adulterated, presence of (the substance identified).

A urine sample will be considered dilute when the creatine concentration is equal to or greater than 2 mg/dL, but less than 20 mg/dL, and the specific gravity is greater than 1.0010, but less than 1.0030.

#### 5. Laboratory Reporting of Results

-The laboratory will report all test results to the Medical Review Officer (MRO). The reporting of test results must be by confidential, secure electronic (not telephone) or hard copy transmission. The laboratory will



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 17 OF 28

### SUBJECT

**Substance Abuse  
(Alcohol, Drugs & Narcotics)  
Drug and Alcohol Policy**

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: ~~September 4, 2013~~ July 10, 2019

send to the MRO a copy of the custody and control form bearing the test results. Test results will be reported as negative, positive (if positive, the drug(s) found will be specified), canceled, unsuitable for testing, test not performed, or specimen adulterated.

The laboratory shall only report quantitative levels of positive results to the MRO upon his/her specific request. Quantitative levels shall only be released to the employer if the employer is involved in an administrative or legal proceeding brought by the employee in challenging a test result. Otherwise, the Agency will receive a result of either "Positive- with the substance being identified", or "Negative". The laboratory will provide a quarterly statistical report to the Agency summarizing the testing activity for each quarter.

#### 6. Specimen Retention and Storage

Negative specimens will be destroyed and discarded by the laboratory after results are reported to the MRO. Positive specimens will be retained in long-term frozen storage (-20 degrees C or less) for a minimum of one (1) year. Split specimens of positive results will be retained in frozen storage for at least 60 days or until the MRO provides a written request for the split to be transferred to another laboratory for analysis (whichever occurs first).

#### 7. Split Specimen Analysis

~~When~~ a laboratory receives a split specimen (Bottle B) from the laboratory that conducted the confirmation analysis of Bottle A, the laboratory will conduct the analysis of Bottle B using GC/MS methodology. The specimen will be reported as a "reconfirmation of the drug(s)" if there is any detectable presence of the drug(s); GC/MS cut off levels do not apply. The results of the split specimen analysis are reported to the MRO. The split specimen will be retained in long-term frozen storage for a minimum of one (1) year by the laboratory that conducted the split specimen analysis. (Or longer if litigation concerning the test is pending).

### G. CONTROLLED SUBSTANCES TESTING PROCEDURES

#### 1. Urine Specimen Collection

- Any person requested to undergo a drug test will be required to provide a urine sample at a designated collection site. Photo identification will be required. In order to ensure integrity of the specimen collection procedure, a standard Drug Testing Custody and Control Form will be used. This form will be completed by the employee and the specimen collection ~~nor~~ and will be forwarded along with the urine sample to a designated laboratory. The MRO, employee, collector and Agency





## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 18 OF 28

### SUBJECT

**Substance Abuse  
(Alcohol, Drugs & Narcotics)  
Drug and Alcohol Policy**

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: **September 4, 2013 July 10, 2019**

representative also receive a copy of the Drug Testing Custody and Control Form.

All urine specimens will be collected in a clean, single-use specimen bottle(s) securely wrapped until filled with the specimen. A clean, single-use collection container that is securely wrapped until used may also be provided. The specimen bottle(s) will be labeled and sealed with tamper-evident tape/label by the collector in the employee's presence. The employee will initial the bottle(s) seals.

Any person requested to undergo a drug test will be provided a copy of written specimen collection procedures, which must be followed by the individual and the collection site personnel.

#### 2. Specimen Collection Sites

The Agency will designate specimen collection sites/facilities. The facilities will have the personnel, materials, equipment and supervision necessary to provide collection in accordance with 49 CFR Part 40. The collection sites/facilities listed in Appendix D have been designated for specimen collections conducted under this policy.

Procedures shall provide for the collection site to be secure. If a facility cannot be dedicated solely to drug testing, the portion of the facility used for testing shall be secured during the drug testing. A facility normally used for other purposes, such as a public rest room or hospital examining room, may be secured by visual inspection to ensure other persons are not present and undetected access is not possible.

#### 3. Chain of Custody and Collection Control

The collection site personnel shall keep the individual's specimen bottle within sight both before and after the individual has urinated. After the specimen is collected, it shall be properly sealed and labeled. The chain-of-custody block on the Drug Testing Custody and Control Form shall be executed by authorized personnel upon receipt of the specimen. This form shall be used for maintaining control and accountability of each specimen from the point of collection to shipment/transportation of the specimen.

#### 4. Individual Privacy

Collection procedures shall allow urine specimens to be provided by the individual in private, unless there is reason to believe that the individual may alter or substitute the specimen, as set forth below:





## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 19 OF 28

### SUBJECT

**Substance Abuse  
(Alcohol, Drugs & Narcotics)  
Drug and Alcohol Policy**

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: ~~September 4, 2013~~ July 10, 2019

- a) The employee has presented a urine specimen that falls outside the normal temperature (32°-38° C/ 90°-100° F)
- b) The collection site person observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample (e.g., substitute urine in plain view, blue dye in specimen presented, etc.).
- c) An employee may also be required to provide a urine specimen under direct observation in the event specimen adulteration is suspected under Section F.4. and H.4. of this policy. However, a higher-level supervisor of the collection site or a designated employer representative shall review and concur in advance with any decision by a collection site person to obtain a specimen under the direct observation of a same gender collection site person based upon the circumstances described above. During an observed collection, the employee will be required to raise and lower clothing and turn around in plain view as well as allowing the observer to view the urine stream from the donor to the collection container. Failure to follow the observers instructions during an observed collection to raise clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if the employee has any type of prosthetic or other device that could be used to interfere with the collection process will be considered a refusal per Section 40.191(a) (9) (10).
- d) If the sample is being collected from an employee in need of medical attention (e.g., as part of a post-accident test given in an emergency medical facility), necessary medical attention shall not be delayed in order to collect the specimen. Specimens will not be collected from deceased or comatose employees.

#### 5. Insufficient Volume

**Original specimen (with insufficient volume) will be discarded unless temperature is out of range or shows evidence of adulteration or tampering. The individual will remain at the collection site until process is complete.**

**The individual will be allowed to drink up to forty (40) ounces of fluid. If the specimen is not provided within three (3) hours of the first attempt, the collection process will be discontinued. The individual ~~will~~ then ~~will~~ be referred to the MRO.**



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 20 OF 28

### SUBJECT

**Substance Abuse  
(Alcohol, Drugs & Narcotics)  
Drug and Alcohol Policy**

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: ~~September 4, 2013~~ July 10, 2019

The individual will then have five (5) days to obtain a medical examination. The referring physician must be acceptable to the MRO. The medical examination will look for ascertainable physiological conditions or documented pre-existing psychological disorders present at the time of the examination.

#### 6. Specimen Integrity and Identity

The Agency, the employee, and the collection site shall take appropriate precautions to preserve the integrity of the urine specimen by ensuring that it is not adulterated or diluted during the collection procedure and that the urine specimen tested is that of the person from whom it was collected. Collection site personnel will be responsible for maintaining the integrity of the specimen collection and transfer process, but employees are expected to cooperate with collection site personnel and to exercise good faith in conjunction with the specimen collection procedures.

#### 7. Split Specimen Procedures

There must be a sufficient volume of each specimen to allow for it to be subdivided, secured and labeled in the presence of the tested individual and retained in a secured manner to prevent the possibility of tampering. This will allow an individual the opportunity to request a retest of the specimen by an appropriate laboratory in accordance with Section F.7. of this policy.

#### 8. Transportation to Laboratory

Collection site personnel shall arrange to ship the collected specimens to the drug-testing laboratory. The specimens shall be placed in a container designed to minimize the possibility of damage during shipment (e.g., specimen boxes and/or padded mailers); and those containers shall be securely sealed to eliminate the possibility of undetected tampering with the specimen and/or form. The collection site person shall ensure that the chain of custody documentation is enclosed in each container sealed for shipment to the drug-testing laboratory.

#### 9. Failure to Cooperate

Any employee required to provide a urine sample may be asked to sign a consent or release form authorizing the collection of the specimen, analysis of the specimen for designated controlled substances, and release of the results to the employer. The employee will not be required to waive liability with respect to negligence on the part of any person participating in the collection, handling or analysis of the specimen or to indemnify any person for the negligence of others.



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 21 OF 28

### SUBJECT

**Substance Abuse  
(Alcohol, Drugs & Narcotics)  
Drug and Alcohol Policy**

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: ~~September 4, 2013~~ July 10, 2019

If the employee refuses to cooperate during the collection process (e.g., refusal to provide a complete specimen, complete paperwork, initial specimen), the collection site person will inform the Agency representative and document the employee's conduct on the Drug Testing Custody and Control Form. Employees are expected to exercise good faith and cooperate during the collection process and failure to do so will subject the employee to disciplinary action, up to and including termination, independent and regardless of the results of any subsequent drug test.

### H. CONTROLLED SUBSTANCE TEST RESULTS

#### 1. Medical Review Officer (MRO)

All confirmed positive and negative test results will be reported by the laboratory directly to the medical review officer (MRO) prior to any results being released to the Agency. The MRO will be a licensed physician with knowledge of substance abuse disorders who has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information. The MRO will review and consider possible alternative medical explanations for the positive test result as well as the chain of custody to ensure that it is complete and sufficient on its face. The Agency will designate an MRO for its controlled substance testing program. ~~The designated MRO is listed in Appendix D.~~

#### 2. MRO Duties

The MRO will perform the following functions for the Agency:

- a) Review the results of drug testing before they are reported to the Agency;
- b) Review and interpret each confirmed positive test result to determine if there is an alternative medical explanation for the confirmed positive test result. The MRO may include these steps:
  - 1) Conducting a medical interview with the individual tested;
  - 2) Reviewing the individual's medical history and any relevant biomedical factors;
  - 3) Reviewing all medical records made available by the individual tested to determine if a confirmed positive test resulted from legally purchased medication.
- c) Requiring, if necessary, that the original specimen be reanalyzed to determine the accuracy of the reported test result; and
- d) Verifying that the laboratory report and assessment are correct.



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 22 OF 28

### SUBJECT

**Substance Abuse  
(Alcohol, Drugs & Narcotics)  
Drug and Alcohol Policy**

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: ~~September 4, 2013~~ July 10, 2019

### 3. Action on Positive Test Results

Prior to making a final decision to verify a positive test result for an individual, the MRO will give the individual an opportunity to discuss the test result. The MRO will contact the individual directly, on a confidential basis, to determine whether the individual wishes to discuss the test result. A staff person under the MRO's supervision may make the initial contact and a medically licensed or certified staff person may gather information from the individual. Except as provided below, the MRO will talk directly with the individual before verifying a test as positive.

If, after making and documenting all reasonable efforts to contact the individual, the MRO is unable to reach the individual directly, the MRO will contact a designated Agency representative who will direct the individual to contact the MRO as soon as possible. If it becomes necessary to reach the individual through an Agency representative, the representative will utilize procedures to ensure, to the maximum extent practicable, the requirement that the individual contact the MRO is held in confidence.

The MRO may verify a test as positive without having communicated directly with an individual about the results in three circumstances:

- a. If the individual expressly declines the opportunity to discuss the test;
- b. If the designated Agency representative has successfully made and documented a contact with the individual and instructed him/her to contact the MRO, and more than five (5) days have passed since the individual was successfully contacted; or
- c. If neither the MRO nor employer has successfully contacted the employee after fourteen (14) days of reasonable effort.

If a test is verified as positive because of an individual's failure to contact the MRO, the individual will have the opportunity to provide the MRO with evidence documenting that serious illness, injury or other circumstances unavoidably prevented him/her from timely contacting the MRO. The MRO, on the basis of such information, may reopen the verification and allow the individual to present information concerning a legitimate explanation for the confirmed positive test. If the MRO concludes that there is a legitimate explanation, the MRO will declare the test to be negative.

In verification of an opiate positive result the MRO may require that the employee submit to a medical examination by an Agency-designated



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 23 OF 28

### SUBJECT

**Substance Abuse  
(Alcohol, Drugs & Narcotics)  
Drug and Alcohol Policy**

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: ~~September 4, 2013~~ July 10, 2019

physician. The purpose of the examination is to determine if there is clinical evidence of unauthorized use of an opiate substance. An employee's refusal to undergo the medical examination may result in a positive test determination.

#### 4. MRO Determinations

If the MRO determines, after appropriate review, that there is a legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the MRO will report the test as negative.

If the MRO determines, after appropriate review, that there is no legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the MRO shall refer the individual tested to the Agency for further proceedings in accordance with this policy, report the test as positive, and provide the name of drug(s) detected.

If the MRO determines, based upon his/her review of the laboratory inspection reports, quality assurance and quality control data, and other drug test results, that a particular drug test result is scientifically insufficient for further action, the MRO will conclude that the test is canceled.

If the MRO determines that a specimen is unsuitable for testing, the MRO will cancel the test. The MRO will provide medical review and verification for all laboratories and reported substituted specimen results. If the MRO receives a laboratory report identifying the specimen as adulterated, the MRO will report the test as adulterated and inform the Agency that the employee has "refused to test".

#### 5. Disclosure of Information

The MRO will not disclose to any third-party medical information provided by the individual to the MRO as part of the testing verification process, except as provided below:

- a. Before obtaining medical information from the employee as part of the verification process, the MRO will advise the employee that the information may be disclosed to third parties and of the identity of any parties to whom the information may be disclosed.

#### 6. Split Specimen Procedures



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 24 OF 28

### SUBJECT

**Substance Abuse  
(Alcohol, Drugs & Narcotics)  
Drug and Alcohol Policy**

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: ~~September 4, 2013~~ July 10, 2019

The MRO will notify each employee who has a verified positive test that he/she has seventy-two (72) hours in which to request a test of the split specimen. If the employee requests an analysis of the split specimen within seventy-two (72) hours of such notice, the MRO will direct, in writing, the laboratory to provide the split specimen to another DHHS-certified laboratory for analysis. The employee will not be allowed to request a reanalysis of the primary specimen and any retest will be at the employee's expense.

If the analysis of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, or if the split specimen is unavailable, inadequate for testing, or untestable, the MRO will cancel the test and report the cancellation and the reasons for it to the DOT, the employer and the employee. However, because some analytes deteriorate or are lost during freezing and/or storage, quantitation for a retest is not subject to a specific cutoff requirement but must provide data sufficient to confirm the presence of the drug or metabolite.

If an employee has not contacted the MRO within seventy-two (72) hours, the employee may present the MRO with information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the verified positive test, or other circumstances unavoidably prevented the employee from timely contacting the MRO. If the MRO concludes that there is a legitimate explanation of the employee's failure to contact him/her within 72 hours, the MRO will direct that analysis of the split specimen be performed.

### I. CONFIDENTIALITY AND RECORDKEEPING

#### 1. Confidentiality

The Agency will maintain all records generated under this policy in a secure manner so that disclosure to unauthorized persons does not occur. Thus, the results of any tests administered under this policy and/or any other information generated pursuant to this policy will not be disclosed or released to anyone without the express written consent of the employee, except where otherwise required or authorized by law. In addition, the Agency's contract with its designated laboratory requires it to maintain all employee test records in confidence.

However, the laboratory or the Agency may disclose information required to be maintained under this policy to the employee, the employer or the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol and/or drug test administered under this policy, or from the employer's determination that





## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 25 OF 28

### SUBJECT

**Substance Abuse  
(Alcohol, Drugs & Narcotics)  
Drug and Alcohol Policy**

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: **September 4, 2013 July 10, 2019**

the employee engaged in conduct prohibited by this policy (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee.)

#### 2. Access to Facilities and Records

Upon written request by any covered employee, the Agency will promptly provide copies of any records pertaining to the employee's use of alcohol or drugs, including any records pertaining to his or her alcohol or drug tests. Access to a covered employee's records will not be contingent upon payment for records other than those specifically requested.

The Agency will also permit access to all facilities utilized and alcohol or drug testing documents generated in complying with the requirements of 49 CFR Part 655 to the Secretary of Transportation, any DOT agency with regulatory authority over the employer or any of its covered employees, or to a State oversight agency. When requested by the National Transportation Safety Board as part of an accident investigation, the Agency will disclose information related to the employer's administration of a post-accident alcohol and/or drug test administered following the accident under investigation.

Records will also be made available to an identified person or a subsequent employer upon receipt of a written request from an employee, but only as expressly authorized and directed by the terms of the employee's written consent. The subsequent release of such information by the person receiving it will be permitted only in accordance with the terms of the employee's consent.

#### J. EMPLOYEE ASSISTANCE PROGRAM/SUBSTANCE ABUSE PROFESSIONAL

##### 1. Employee Education

The Agency will provide employees subject to this policy with education materials explaining the requirements of the Federal Transit Administration drug and alcohol regulations and the Agency policies and procedures for meeting them. In addition, employees will be provided with information concerning the effects of drug use and alcohol misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol or drug problem. This information will be included in the following:

- a. Distribution of an employee Personnel Policy Manual.
- b. Display and distribution of a community service hot-line telephone number for employee assistance.



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 26 OF 28

### SUBJECT

**Substance Abuse  
(Alcohol, Drugs & Narcotics)  
Drug and Alcohol Policy**

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: ~~September 4, 2013~~ July 10, 2019

### ~~c. Appendix E.~~

Covered employees will receive at least sixty (60) minutes of training on the effects and consequences of prohibited drug use on personal health, safety and the work environment and on the signs and symptoms which may indicate prohibited drug use.

Copies of the above materials and this policy will be distributed to each covered employee prior to the start of alcohol and drug testing required herein and to each employee subsequently hired or transferred into a position requiring the performance of a safety-sensitive function covered by this policy. Each employee who receives a copy of these materials will be required to sign a statement certifying that he or she has received a copy of the same. The Agency will retain the original of the signed certificate and will provide a copy to the employee, if requested. ~~Appendix F.~~ The Agency will also provide written notice to representatives of employee organizations as to the availability of this information.

Any questions about the requirements of this policy should be directed to the program contact individual listed in Appendix D.

~~Please refer to Appendix E on the effects of Alcohol Abuse.~~

#### 2. Supervisory Training

Any individual designated to determine whether reasonable suspicion exists to require a covered employee to undergo a drug or alcohol test under this policy will be required to receive at least sixty (60) minutes of training on alcohol misuse and 60 minutes of training on drug use. This training will cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and prohibited drug use.

#### 3. Referral, Evaluation and Treatment

##### a. Available Resources

Any employee who engages in conduct prohibited by this policy will be provided with information about the resources available for evaluating and resolving problems associated with the misuse of alcohol or prohibited drug use, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs. ~~Appendix D.~~

##### b. Substance Abuse Evaluation





## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 27 OF 28

### SUBJECT

**Substance Abuse  
(Alcohol, Drugs & Narcotics)  
Drug and Alcohol Policy**

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: ~~September 4, 2013~~ July 10, 2019

Although an employee's employment with the Agency may be **terminated** for a violation of this policy, **employees will be advised to undergo an evaluation by an appropriate substance abuse professional, who will determine what, if any, assistance the employee may need in resolving problems associated with alcohol misuse and/or prohibited drug use.** This requirement will apply regardless of whether such conduct is discovered as a result of a positive drug or alcohol test, or independent employer knowledge. **The referral, evaluation and rehabilitation requirements outlined above ~~do~~ apply to job applicants who refuse to submit to or test positive in a pre-employment drug test.**

#### 4. Substance Abuse Professional (SAP)

**For purposes of this policy, a substance abuse professional (SAP) is defined as a licensed physician (M.D. or D.O.), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by DOT, NAADAC or ICRC) who has knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol-related disorders.**

### K. DISCIPLINE

**In addition to the removal from safety-sensitive functions required by Federal Transit Administration Regulations, the Agency will take the following disciplinary action against any individual who violates this policy.**

#### 1. Applicants

**An individual who tests positive on a pre-employment or pre-duty test for a prohibited drug will not be hired for a covered function position.** Failure of a drug or alcohol test will disqualify an applicant for employment for a period of two (2) years. **Information on referral to a substance abuse professional will be provided to all applicants who test positive.**

#### 2. Employees

**An employee who has a confirmed alcohol concentration of 0.02 or greater but less than 0.04 will result in removal from his position for eight (8) hours unless a retest results in a concentration measure of less than 0.02. An alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy.**

**Any employee that has a confirmed positive drug or alcohol test will be removed from his/her position, informed of educational and rehabilitation programs available, and evaluated by a Substance Abuse Professional**



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 28 OF 28

### SUBJECT

**Substance Abuse  
(Alcohol, Drugs & Narcotics)  
Drug and Alcohol Policy**

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: **September 4, 2013 July 10, 2019**

**(SAP).** A positive drug and/or alcohol test will also result in termination of employment.

### L. RECORDKEEPING AND REPORTING

#### 1. Retention of Records

**The Agency will maintain records relating to this policy as outlined in 49 CFR Part 655. These records will be maintained in a secure location with controlled access for the specified periods of time, measured from the date of the document's or data's creation.**

#### 2. Management Information System

**The Agency will prepare and submit by March 15 of each year, two (2) summary results reports of all drug and alcohol testing performed under this policy. The Agency will also submit these reports for all contractors who were doing contracted services for the covered year. These reports will be submitted to the FTA Office of Safety and Security. The alcohol summary will contain all of the information required by 49 CFR Part 655 and the drug summary will contain all the information in 49 CFR Part 655.**



## APPENDIX A

### OmniTrans' Safety-Sensitive Function Job ~~Titles~~Classifications

Dispatcher  
Dispatch Supervisor  
Coach Operator  
Field Supervisor  
Fleet Safety and Training Supervisor  
Fleet Safety and Training Instructor  
~~Shop-Shift~~ Supervisor  
Equipment Mechanic  
Mechanic Helper  
Tire Repair Worker  
Utility Service Worker  
Any Other Employee who holds a Commercial Driver's License and  
Performs a Function that Requires a Commercial Driver's License.

## APPENDIX B

### Minimum Thresholds—Cut Off Levels

#### Initial Testing

1. The initial test shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following initial cut off levels shall be used when screening specimens to determine whether they are negative for these five drugs or classes of drugs:

<u>Types of Drugs</u>	<u>Initial Test Cut Off Levels (ng/ml)</u>
Marijuana Metabolites	50
Cocaine Metabolites	150
Opiate Metabolites	2000*
Phencyclidine	25
Amphetamines	500

\* 25ng/ml if immunoassay specific for free morphine.

#### Confirmation Testing

2. All specimens identified as positive on the initial test will be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cut off levels listed in this paragraph for each drug. All confirmations will be by quantitative analysis.

Concentrations that exceed the linear region of the standard curve will be Documented in the laboratory record as “greater than highest standard curve value”.

<u>Types of Drugs</u>	<u>Confirmation Test Cut Off Levels (ng/ml)</u>
Marijuana Metabolites	15*
Cocaine Metabolites	100 **
Opiates: Morphine	2000
Codine	2000
Phencyclidine	25
Amphetamine: Amphetamine	250
Methamphetamine	250 ***

\* Delta 9-Tetrahydrocannabinol 9-Acid

\*\* Benzoylcegonine

\*\*\* Specimen must also contain amphetamine at a concentration greater than or equal to 100 ng/ml.

Cut off levels at both the initial and confirmatory levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of the substances at other concentrations.

## APPENDIX C

### **Random Testing—Minimum Annual Percentages for Drug and Alcohol Testing**

The annual random testing rates for drug and alcohol are determined separately based on the industry wide positive rate for the preceding two (2) consecutive year period, based on annual MIS reports submitted by covered employers. Rates for future years will be announced each year with the rates dependent on industry wide experience rates.

#### **Drugs**

**The current annual percentage of covered employees that need to be tested on an annual basis is 25%.**

#### **Alcohol**

**The current annual percentage of covered employees that need to be tested on an annual basis is 10%.**



## APPENDIX DB

### ~~Company Designated Service Providers for Drug and Alcohol Testing Conducted Under the Terms of This Policy:~~

#### Company Drug and Alcohol Testing Program Contact

For all questions concerning the Agency's policy or implementation of the Agency's drug and alcohol testing program, employees should contact the individual named below:

Name: ~~Marjorie Ewing~~ **Suzanne Pfeiffer**  
Title: Director of Human Resources, ~~Safety & Regulatory Compliance~~  
Address: 1700 W. 5<sup>th</sup> Street  
San Bernardino, CA 92411  
Phone: (909) 379-7261

#### ~~1. Drug Testing Laboratory~~

~~The following DHHS-certified laboratory has been designated by the Agency to conduct the analysis of all urine specimens tested under the terms of this policy:~~

Name: ~~Clinical Reference Laboratory~~  
Address: ~~8433 Quivira~~  
~~Lenexa, KS 66215~~

#### ~~2. Medical Review Officers~~

~~The following physicians have been designated by the Agency to perform Medical Review Officer functions for all drug tests conducted under the terms of this policy:~~

Name: ~~U.S. HealthWorks National MRO/Doctor Donald L. Bucklin, MD~~  
Address: ~~28035 Avenue Stanford West~~  
~~Valencia, CA 91355~~  
Phone: ~~(800) 340-3810~~

Name: ~~U.S. HealthWorks/Doctor Mohammed Mahmud, MD~~  
Address: ~~2171 S. Grove Avenue, Ste. A~~  
~~Ontario, CA 91761~~  
Phone: ~~(909) 923-4080~~

Name: ~~U.S. HealthWorks/Doctor Michael S. Valdez, MD~~  
Address: ~~1760 Chicago Avenue, Ste. J~~  
~~Riverside, CA 92507~~  
Phone: ~~(909) 781-2200~~

Name: ~~U.S. HealthWorks/Doctor G. L. McMurray, MD~~  
Address: ~~599 Inland Center Drive, Suite 105~~  
~~San Bernardino, CA 92408~~  
Phone: ~~(909) 889-2525~~



Name: ~~U.S. HealthWorks Colton Clinic/Doctor Donald L. Bucklin, MD~~  
Address: ~~28035 Avenue Stanford West~~  
~~Valencia, CA 91355~~  
Phone: ~~(800) 340-3810~~

3. ~~Substance Abuse Professional (SAP)~~

~~Substance Abuse Professional (SAP) services, including information, referral, assessment, and evaluation, are available from the following Agency designated individuals/organization:~~

Name: ~~Dr. Kathleen Bruner~~  
~~Robert Bruner, CEAP~~  
~~Gordon Van Cleve, DOT~~  
~~National Substance Abuse Professionals Network~~  
Address: ~~1615 Orange Tree Lane~~  
~~Redlands, CA 92374~~  
Phone: ~~1-800-879-6428~~

4. ~~Collection Sites~~

~~The following clinics have been designated by the Agency to perform collection functions for all drug and alcohol tests conducted under the terms of this policy.~~

Name: ~~U.S. HealthWorks~~  
Address: ~~2171 S. Grove Avenue, Ste. A~~  
~~Ontario, CA 91761~~  
Phone: ~~(909) 923-4080~~

Name: ~~U.S. HealthWorks~~  
Address: ~~1760 Chicago Avenue, Ste. J~~  
~~Riverside, CA 92507~~  
Phone: ~~(909) 781-2200~~

Name: ~~U.S. HealthWorks~~  
Address: ~~599 Inland Center Drive, Suite 105~~  
~~San Bernardino, CA 92408~~  
Phone: ~~(909) 889-2525~~

Name: ~~U.S. HealthWorks~~  
Address: ~~850 East Washington St.~~  
~~Colton, CA 92324~~  
Phone: ~~(909) 370-0572~~  
~~\_\_\_\_\_~~

## APPENDIX E

### ALCOHOL MISUSE INFORMATION

Alcohol is a drug. It is a central nervous system depressant that slows down the body's functions. For some people, the use of alcohol can become addictive. The body develops a tolerance for alcohol, thus needing more of the drug to achieve the same effects. Once addicted to alcohol, the body experiences withdrawal symptoms when alcohol is not present in the bloodstream. Alcohol addiction, or alcoholism, is a disease. If left untreated, alcoholism is progressive—that is the damage to the body continues, and it is ultimately fatal.

Alcohol misuse, alcohol abuse, and alcoholism affect an individual's work performance. Alcohol, even in very small amounts, affects judgments, reflexes, thinking ability, coordination, and attention. Alcohol is particularly dangerous when an individual needs to make a decision and act in an emergency or unfamiliar situation. Alcohol in a person's bloodstream affects one's ability to operate a vehicle or complex machinery, and to perform many safety-sensitive related tasks. Coming to work with a "hangover" also affects an employee's ability to perform. Hangover symptoms include diminished clarity in thinking, tremors that reduce fine motor coordination and flu-like feelings that decrease alertness and well-being.

Alcohol misuse, alcohol abuse and alcoholism also affect an individual's personal and family life. Heavy alcohol drinkers have more illness and medical conditions requiring treatment. Financial and legal complications from excessive drinking are common problems. In the late stages of alcoholism, the individual's life is centered around alcohol; family, job, friends (except drinking buddies) are unimportant and ignored. Alcohol abuse and alcoholism can cause permanent damage to the liver, heart, brain, and other vital organs.

The following are indicators that alcohol is a problem in an individual's life: Calling in "sick" from work because of heavy drinking or hangover. Making repeated promises to family/ friends to "cut down" or stop drinking.

- Needing increasing amounts of alcohol to "feel good or get high".
- Morning shakes or tremors that are relieved by taking a drink.
- Being arrested for drunk driving.
- Needing a drink to get through a shift at work.
- Refusing to participate in leisure activities where alcohol is unavailable.
- Experiencing periods of "blackout" when drinking (not remembering some events or situations that occurred while drinking).





**SUBSTANCE ABUSE POLICY ACKNOWLEDGEMENT**

I, the undersigned, do hereby acknowledge that I have received a copy of the Omnitrans SUBSTANCE ABUSE POLICY and understand that I must abide by its provisions.

\_\_\_\_\_  
Employee's Name (PLEASE PRINT)

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
**APPENDIX F**

## APPENDIX G

### Breathe Alcohol Testing Procedures

~~9/30/11 FTA determined this appendix is not required~~



## ~~APPENDIX H~~

### ~~DOT Urine Specimen Collection Procedures~~

~~9/30/11 FTA determined this appendix is not required~~



## APPENDIX I

### POST-ACCIDENT INDIVIDUAL TEST SUMMARY

- 1) Accident Identifier: \_\_\_\_\_
- 2) Location of Accident: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 3) Accident Date: \_\_\_\_\_ Time: \_\_\_\_\_
- 4) Report Date: \_\_\_\_\_ Time: \_\_\_\_\_
- 5) Name of Employee: \_\_\_\_\_
- 6) Identification Number: \_\_\_\_\_
- 7) Position: \_\_\_\_\_
- 8) Result of Accident: \_\_\_\_\_ Fatality  
\_\_\_\_\_ Disabling Damage\*to One or More Vehicles  
\_\_\_\_\_ Injury Requiring Immediate Transport to  
\_\_\_\_\_ Medical Facility  
\_\_\_\_\_ Employee \_\_\_\_\_ Other Vehicle  
\_\_\_\_\_ Passenger \_\_\_\_\_ Other, Specify: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 9) Was the Employee sent for a post-accident test? \_\_\_\_\_ Yes \_\_\_\_\_ No
- 10) If No, Explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 11) Decision to Test: FTA Authority \_\_\_\_\_ Yes \_\_\_\_\_ No  
Company Authority \_\_\_\_\_ Yes \_\_\_\_\_ No
- 12) Type of Test: \_\_\_\_\_ Drug \_\_\_\_\_ Alcohol
- 13) Supervisor Making Determination: \_\_\_\_\_
- 14) Notification of Test: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_
- 15) Test Conducted, Drug: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_  
Alcohol: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_



16) ~~Did the alcohol test occur more than two hours from the time of the accident?~~

~~\_\_\_\_\_ Yes \_\_\_\_\_ No~~

~~If Yes, Explain: \_\_\_\_\_~~

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~

17) ~~If no alcohol test occurred because more than eight hours elapsed from time of the accident, please explain: \_\_\_\_\_~~

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~

18) ~~Did the employee leave the scene of the accident without just cause? \_\_\_\_ Yes \_\_\_\_ No~~

~~If Yes, Explain: \_\_\_\_\_~~

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~

19) ~~If no drug test was performed because more than 32 hours had passed since the time of the accident, explain why: \_\_\_\_\_~~

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~

~~Supervisor making determination: \_\_\_\_\_~~

20) ~~Test Result: \_\_\_\_\_ Positive \_\_\_\_\_ Negative \_\_\_\_\_ Cancelled~~

21) ~~Attachments:~~

- ~~\_\_\_\_\_ # Test Result Summary~~
- ~~\_\_\_\_\_ # Order to Test~~
- ~~\_\_\_\_\_ # Chain of Custody~~
- ~~\_\_\_\_\_ # Alcohol Testing Form~~

~~\* *Disabling Damage* means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement, without damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, mirrors, or windshield wipers that makes them inoperative.~~



## APPENDIX J

### REASONABLE SUSPICION TESTING DETERMINATION FORM

**Note to Supervisor/Company Official:** This form is to be used to substantiate and document the objective facts and observations leading to a reasonable suspicion testing determination. After a direct observation of the employee's appearance, behavior, speech, body odors, and/or performance, please check ALL the indicators that raised your suspicion that the employee may have engaged in conduct which violates the Drug and Alcohol policy. **Read further instructions on back page.**

Employee Name \_\_\_\_\_ Job Title \_\_\_\_\_

Supervisor/Co. Official \_\_\_\_\_ Job Title \_\_\_\_\_

Date/Time of Determination: \_\_\_\_\_

Name(s) of Witness(es), if any: \_\_\_\_\_

#### APPEARANCE OR PHYSICAL INDICATORS C. SPEECH OR BODY ODORS

- |  |  |
|--|--|
| <input type="checkbox"/> Flushed or very pale complexion       | <input type="checkbox"/> Slurred, thick, slowed          |
| <input type="checkbox"/> Excessive sweating or skin clamminess | <input type="checkbox"/> Incoherent, nonsensical, silly  |
| <input type="checkbox"/> Bloodshot or watery eyes              | <input type="checkbox"/> Loud, boisterous                |
| <input type="checkbox"/> Dilated or constricted pupils         | <input type="checkbox"/> Repetitious, rambling           |
| <input type="checkbox"/> Nystagmus (jerky eye movement)        | <input type="checkbox"/> Cursing, inappropriate language |
| <input type="checkbox"/> Unfocused, blank stare                | <input type="checkbox"/> Rapid, pressured                |
| <input type="checkbox"/> Runny/bleeding nose                   | <input type="checkbox"/> Excessive talkativeness         |
| <input type="checkbox"/> Disheveled clothing                   | <input type="checkbox"/> Exaggerated enunciation         |
| <input type="checkbox"/> Unkempt grooming                      | <input type="checkbox"/> Odor of alcohol                 |
| <input type="checkbox"/> Possible puncture marks on arms       | <input type="checkbox"/> Distinctive pungent aroma       |
| <input type="checkbox"/> Dry mouth, wetting lips frequently    |  |

#### BEHAVIORAL INDICATORS D. PERFORMANCE INDICATORS\*

- |   |   |
|---|---|
| <input type="checkbox"/> Stumbling, unsteady gait                 | <input type="checkbox"/> Delayed or faulty decision-making      |
| <input type="checkbox"/> Poor coordination                        | <input type="checkbox"/> Impulsive, unusual risk-taking         |
| <input type="checkbox"/> Hyperactivity, fidgety, agitated         | <input type="checkbox"/> Inability to concentrate               |
| <input type="checkbox"/> Nervous, disorderly                      | <input type="checkbox"/> Lack of motivation                     |
| <input type="checkbox"/> Irritable, moody, belligerent            | <input type="checkbox"/> Impaired mental functioning            |
| <input type="checkbox"/> Shaking, tremors, twitches               | <input type="checkbox"/> Decreased alertness                    |
| <input type="checkbox"/> Dizziness or fainting                    | <input type="checkbox"/> Significant increase in errors         |
| <input type="checkbox"/> Nausea or vomiting                       | <input type="checkbox"/> Reduced quality/quantity of work       |
| <input type="checkbox"/> Breathing irregularly or with difficulty | <input type="checkbox"/> Inappropriate response to instructions |
| <input type="checkbox"/> Extreme fatigue or sleeping on the job   | <input type="checkbox"/> Excessive absences or use of sick time |
| <input type="checkbox"/> Depressed, withdrawn                     | <input type="checkbox"/> Lackadaisical, apathetic attitude      |

Other observations not noted above: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date/Time of Test: \_\_\_\_\_ Test Refused: ☐ No ☐ Yes



~~\*These are usually long-term indicators. Must be combined with other indicators under A, B, or C.~~

**Instructions to Supervisor/Company Official:**

~~Conduct the employee interview in a private setting, mindful of the dignity and confidentiality rights of the employee.~~

~~Give the employee an opportunity to explain the reason(s) for the indicators you have observed from his or her perspective. Expect denial. Note explanation given by the employee (if any) in the space below.~~

~~Determine if the employee can be sent for reasonable suspicion testing for alcohol. Remember that FTA rule Part 655 authorizes reasonable suspicion testing for alcohol only just before, during, or just after the employee's performance of safety-sensitive function.~~

~~Arrange to have the employee accompanied to the collection site for testing without delay.~~

~~Federal regulations require that reasonable suspicion testing for alcohol be administered within two (2) hours following the determination to refer the employee for testing. If alcohol testing is not conducted within two hours, document the reason for the delay. If the test is not administered within eight (8) hours, cease all attempts to test and document the reason for the inability to test. Please use the space below to document any delays or inability to test.~~

~~Complete and sign this document and send original to the Human Resources Department, attention Denise Gibson.~~

Supervisor/Company Official Signature \_\_\_\_\_

**~~IMPORTANT: DO NOT TRY TO DIAGNOSE ABUSE OR ADDICTION OR IDENTIFY THE SPECIFIC DRUG ASSOCIATED WITH THE EMPLOYEE'S BEHAVIOR OR APPEARANCE.~~**

APPENDIX K



## **~~SAFETY SENSITIVE EMPLOYEE PRESCRIPTION DRUG USE FORM~~**

### ~~INSTRUCTIONS FOR EMPLOYEES IN SAFETY SENSITIVE POSITIONS~~

~~You must complete this form if:~~

~~You are disclosing the use of a new prescription drug. You must complete the "Employee Section" of this form. Have your physician complete the "Physician Section" and forward to your supervisor or the Human Resources Department. Attach copies of the prescription bottle labels.~~

~~You are disclosing a prescription drug renewal (#1 has previously been completed). You must complete the "Employee Section" of this form and attach a copy of your prescription renewal label, and forward to your supervisor or the Human Resources Department.~~

Employee Section:

Printed Name: \_\_\_\_\_ Employee # \_\_\_\_\_

**Employee's Safety** Sensitive Job Function (check those that apply) (for a list of Safety Sensitive positions refer to Policy 701, Appendix A):

- ☐ Operate a public transit bus
- ☐ Operate a non-revenue service vehicle
- ☐ Control the dispatch or movement of company transit buses
- ☐ Maintain and/or repair transit vehicles
- ☐ Supervisor whose duties require the performance of any of the above functions

~~Employees must wait at least 4 hours after taking any medication containing alcohol before working.~~

~~Employees must wait 8 hours after taking any over the counter medications containing the following ingredients before they perform safety sensitive duties:~~

<del>Cold &amp; Allergy Medications</del>	<del>Diphenhydramine, Chlorpheniramine, Clemastine</del>
<del>Motion Sickness Medications</del>	<del>Bonine (Meclizine) and Dramamine (Dimenhydrinate)</del>
<del>Sleep Medications</del>	<del>Doxylamine, Diphenhydramine</del>

~~I understand that it is my obligation to inform my physician of my job functions and inform Omnitrans of any medication I am taking and to obtain approval from Omnitrans to work while taking this medication.~~

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date

Physician Section:

**PRESCRIPTION DRUGS**

~~\*\* To Be Completed By Physician Only \*\*~~





Based on your best medical opinion, make your determination and complete the section below and check the applicable box. You may contact the Human Resources Department at (909) 379-7260 if you have any questions.

~~Safe — This patient's condition and medication will not interfere with his/her ability to perform job duties safely.~~  
~~Potential Impairment — This medication may impair functioning; patient should not take while performing job duties or for a period of time prior to duties (please specify).~~

Name of Drug \_\_\_\_\_ Dosage/Frequency \_\_\_\_\_

1. \_\_\_\_\_  
~~☐ Safe ☐ Potential Impairment — Employee should not take during or for \_\_\_\_\_ hours before duties.~~

2. \_\_\_\_\_  
~~☐ Safe ☐ Potential Impairment — Employee should not take during or for \_\_\_\_\_ hours before duties.~~

3. \_\_\_\_\_  
~~☐ Safe ☐ Potential Impairment — Employee should not take during or for \_\_\_\_\_ hours before duties.~~

~~I have reviewed the above named employee's job functions and medical records. It is my opinion that this patient's condition and the medication(s) he/she is taking or has been prescribed will not interfere with his/her ability to safely perform those job functions.~~

\_\_\_\_\_  
Physician's Signature \_\_\_\_\_ Physicians Medical Office Stamp

\_\_\_\_\_  
Physician's Printed Name \_\_\_\_\_ Date

~~FOR HR OR SUPERVISOR USE ONLY~~

~~Date Supv. Received: \_\_\_\_\_ Received by: \_\_\_\_\_~~

~~Date HR Received: \_\_\_\_\_ Received by: \_\_\_\_\_~~

~~HR: ☐ Approved ☐ Not Approved ☐ Supervisor Notified: \_\_\_\_\_~~

~~\_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_~~

~~{Fn 04/07/10} \_\_\_\_\_~~

~~APPENDIX L~~

~~**SAFETY- SENSITIVE EMPLOYEE NON-PRESCRIPTION FORM**~~

~~**\*\* Over-the-Counter Medications Only \*\***~~

~~INSTRUCTIONS FOR EMPLOYEES IN SAFETY SENSITIVE POSITIONS~~



*You must complete this form if you are disclosing the use of non-prescription over the counter medications.*

Name of Medication: \_\_\_\_\_

Dosage Taken: \_\_\_\_\_

I take this medication during my work hours (check one): Yes ☐ No ☐

This medication affects my ability to drive or operate machinery (check one): Yes ☐ No ☐

~~Employees must wait at least 4 hours after taking any medication containing alcohol before working.~~  
~~Employees must wait 8 hours after taking over the counter medications containing the following ingredients before they perform safety sensitive duties:~~

<del>Cold &amp; Allergy Medications</del>	<del>Diphenhydramine, Chlorpheniramine, Clemastine</del>
<del>Motion Sickness Medications</del>	<del>Bonine (Meclizine) and Dramamine (Dimenhydrinate)</del>
<del>Sleep Medications</del>	<del>Doxylamine, Diphenhydramine</del>

~~I understand that it is my obligation to inform my supervisor/Omnitrans of any medication I am taking that may affect my ability to perform my safety sensitive job duties while taking this medication (Policy 701, Prescription & Non-Prescription (Over the Counter) Drug Use, III., A., 3.).~~

\_\_\_\_\_  
Employee's Name (printed) \_\_\_\_\_ Employee # \_\_\_\_\_

\_\_\_\_\_  
Employee's Signature \_\_\_\_\_ Date \_\_\_\_\_

FOR HUMAN RESOURCES OR SUPERVISOR USE ONLY


Date Supv. Received: \_\_\_\_\_ Received by: \_\_\_\_\_

Date HR Received: \_\_\_\_\_ Received by: \_\_\_\_\_

HR: ☐ Approved ☐ Not Approved Supervisor Notified: \_\_\_\_\_

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

\_\_\_\_\_  
{Fn 04/07/10}

 <b>PERSONNEL POLICY MANUAL</b>	POLICY <b>701</b> PAGE    1 OF    26
SUBJECT  <b>Drug and Alcohol Policy</b>	APPROVED BY OMNITRANS BOARD OF DIRECTORS  DATE: July 10, 2019

## I. Purpose

The purpose of this policy is to establish a program to comply with the requirements of 49 CFR Parts 40 and 655, as amended, and is designed to help prevent accidents, injuries, and fatalities resulting from the misuse of alcohol and use of prohibited drugs by employees who perform safety-sensitive functions.

Omnitrans is dedicated to providing safe, dependable and economical transportation services to our transit system passengers. The Federal Transit Administration (FTA) has specifically noted the use of alcohol and prohibited drugs has been demonstrated to significantly affect the performance of individuals in the mass transportation industry. Omnitrans employees are our most valuable resource and it is our goal to provide a healthy, satisfying working environment, which promotes personal opportunities for growth. In meeting these goals, it is our policy to (1) assure employees are not impaired in their ability to perform assigned duties in a safe, productive, and healthy manner; (2) create a workplace environment free from the adverse effects of drug and alcohol substance abuse or misuse; (3) prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances; and (4) to encourage employees to seek professional assistance for personal problems, including alcohol or drug dependency, that may adversely affect their ability to perform their assigned duties.

The purpose of this policy is to ensure worker fitness for duty and to protect our employees, passengers, and the public from the risks posed by the use of alcohol and prohibited drugs. The potential side effects of alcohol misuse are substantial in absenteeism, increased health care costs, etc. This program will also help discourage substance abuse and serve as a deterrent to those individuals who might be tempted to try drugs for the first time or who currently use drugs. Finally, this program will enhance the safety of our employees and the public by fostering the early identification and referral for treatment of workers with alcohol or drug abuse problems.

This policy is also intended to comply with all applicable Federal regulations governing workplace anti-drug programs in the transit industry. The Federal Transit Administration (FTA) of the U. S. Department of Transportation has published 49 CFR Part 655, as amended, that mandates urine drug testing and breath alcohol testing for safety-sensitive functions and prevents performance of safety-sensitive functions when there is a positive test result. The U. S. Department of Transportation (DOT) has also enacted 49 CFR part 40 that sets standards for the collection and testing of urine and breath specimens. In addition, the Federal government published 49 CFR Part 32, "The Drug-Free Workplace Act of 1988," which requires the establishment of drug-free workplace policies and the reporting of certain drug-



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 2 OF 26

SUBJECT

### Drug and Alcohol Policy

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: July 10, 2019

related offenses to the FTA. This policy incorporates those requirements for safety-sensitive employees and others when so noted.

All provisions set forth in **bold face print** are consistent with requirements set forth in 49 CFR Part 40 and Part 655, as amended. All other provisions are set forth under the authority of the Agency.

## II. Scope

**This policy applies to all safety-sensitive and non-safety-sensitive Agency applicants, transferees, employees, contracted employees, and contractors when they are on transit property or when performing any transit related safety-sensitive or non-safety-sensitive business.** Visitors, vendors, and contractor employees are governed by this policy while on transit premises and will not be permitted to conduct transit business if found to be in violation of this policy.

### A. For purposes of this policy “safety-sensitive function” includes:

1. **Operating a revenue service vehicle, including when not in revenue service;**
2. **Operating a non-revenue vehicle, when required to be operated by a holder of a Commercial Driver’s License;**
3. **Controlling dispatch or movement of a revenue service vehicle;**
4. **Maintaining a revenue service vehicle or equipment used in revenue service, or**
5. **Carrying a firearm for security purposes.**

**An individual will be considered to be performing a safety-sensitive function during any period in which he/she is actually performing, ready to perform or immediately available to perform such functions.**

Appendix A lists Safety-Sensitive job classifications at Omnitrans.

### B. Contractors

**This policy also applies to recipients of FTA assistance as defined in 49 CFR Part 655, as well as other entities that provide mass transportation services or perform safety-sensitive functions for such recipients or entities, including subrecipients, operators and contractors. Contractors subject to the requirements of the regulations include persons or organizations that provide services for the Agency consistent with a specific understanding or arrangement that reflects an ongoing relationship between the parties. The Agency will ensure that any**



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 3 OF 26

SUBJECT

### Drug and Alcohol Policy

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: July 10, 2019

**contractors who perform safety-sensitive functions within the scope of this policy and the regulations certify their compliance with the requirements of 49 CFR Part 655.**

### III. Procedure

#### A. Prohibited Substances

##### 1. Alcohol

**Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol. "Alcohol use" means the consumption of any beverage, mixture, or preparation, including any medication, which contains alcohol. "Alcohol concentration" (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.**

##### 2. Illegally Used Controlled Substances or Drugs

**Although this policy prohibits the use of any controlled substances not lawfully prescribed by a physician, any drug test required under this policy will analyze an individual's urine to test for the presence of marijuana, cocaine, opioids, amphetamines and phencyclidine. Consumption of these products is prohibited at all times. Therefore, safety-sensitive employees may be tested at any time while on duty.**

##### 3. Prescription Medications

**An individual will be allowed to list on the back of the donor copy of the Urine Custody and Control Form, any prescribed medication that he/she may be taking or may have recently taken.**

#### B. Conditions of Employment

**Participation in Omnitrans drug and alcohol testing program is a requirement of each safety-sensitive and non-safety sensitive employee and, therefore is a condition of employment. Covered employees are also prohibited from refusing to submit to a required substance abuse test as outlined by this policy.**

##### 1. Prohibited Conduct

###### a. Manufacture, Trafficking, Possession, and Use.

**Any employee engaging in the manufacture, distribution, dispensing, possession, or use of prohibited substances on Omnitrans premises, in transit vehicles, in uniform, or while on Omnitrans business will be subject to termination. Law enforcement shall be notified, as appropriate, where criminal activity is suspected.**



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 4 OF 26

SUBJECT

### Drug and Alcohol Policy

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: July 10, 2019

b. Impairment

Any **safety-sensitive** or non-safety sensitive employee who is reasonably suspected of being impaired by a prohibited substance, or not fit for duty shall be suspended from job duties pending an investigation and verification of condition. Employees found to be impaired by prohibited substances or **who fail to pass a drug or alcohol test shall be removed from duty** and subject to termination. **A drug or alcohol test is considered positive if the individual is found to have a quantifiable presence of a prohibited substance in the body above the minimum thresholds defined in 49 CFR Part 40, as amended.**

c. Alcohol Use

Agency and the **Federal Transit Administration Regulations prohibit the following conduct as it relates to alcohol use:**

- 1) **No safety-sensitive or non-safety-sensitive employee should report for duty or remain on duty when his/her ability to perform assigned functions is adversely affected by alcohol or when his/her blood alcohol concentration is 0.04 or greater.**
- 2) **No employee shall have used alcohol within four hours of reporting for duty.**
- 3) **No employee shall use alcohol while performing safety-sensitive functions, or just before or just after performing a safety-sensitive function.**
- 4) **No employees shall use alcohol during the hours they are on call.**
- 5) **No safety-sensitive employee shall use alcohol for eight hours following an accident, unless the employee has first undergone a post-accident alcohol test.**

Violation of these provisions is prohibited and will make the employee subject to disciplinary action up to and including termination.

2. Notifying the Transit System of Criminal Alcohol and/or Drug Conviction

Any employee who fails to notify Omnitrans in writing within five (5) days of any criminal alcohol and/or drug statute conviction shall be subject to disciplinary action up to and including termination. Omnitrans will then report the conviction as stated above to the FTA Regional Counsel within ten (10) calendar days.

3. Compliance with Testing Requirements

**All safety-sensitive and non-safety-sensitive employees will be subject to urine drug testing and breath alcohol testing. Any employee who refuses to comply with a request for testing, who provides false information in**



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 5 OF 26

SUBJECT

### Drug and Alcohol Policy

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: July 10, 2019

connection with a test, or who attempts to falsify test results through tampering, contamination, adulteration, or substitution shall be removed from duty immediately, and be subject to dismissal proceedings. Refusal can include an inability to provide a urine specimen or breath sample without a valid medical explanation, as well as a verbal declaration, obstructive behavior, or physical absence resulting in the inability to conduct the test.

#### 4. Self Identification and Rehabilitation

It is Omnitrans policy to encourage employees to identify and detect their alcohol and substance abuse problems, and to enter a rehabilitation program. Accordingly, the Agency will allow employees, with a minimum of one year's service, one opportunity to enter a rehabilitation program if they identify themselves before Agency detection of the problem, or the occurrence of a situation that may result in a requirement to undergo urine and breath testing.

#### 5. -Proper Application of the Policy

Omnitrans is dedicated to ensuring fair and equitable application of this policy. Therefore, all supervisory employees are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisory employee who knowingly disregards the requirements of this policy, or who is found to deliberately misuse, or neglect to enforce the policy in regard to subordinates, shall be subject to disciplinary action up to and including termination.

### C. TESTING CIRCUMSTANCES

Analytical urine drug testing and breath testing for alcohol may be conducted when circumstances warrant or as required by Federal regulations. **All safety-sensitive and non-safety-sensitive employees shall be subject to testing prior to employment (post offer) or transfer to safety-sensitive positions, for reasonable suspicions/probable cause, fit for duty medical examination (post 90 day return from leave), and following an accident. Those employees who perform the safety-sensitive job listed in Appendix A to this policy shall also be subject to testing on a random, unannounced basis.**

**Before performing any alcohol or drug test required by this policy, the Agency will notify the test subject the test is being required pursuant to this policy and/or Federal Transit Administration Regulations (49 CFR Part 655). The Agency will not represent that any requested test is required by federal regulations if, in fact, the individual to be tested is not subject to those regulations.**

#### 1. Pre-employment Testing

**All safety-sensitive and non-safety-sensitive position applicants shall undergo urine drug testing prior to (post offer) employment. Receipt by**





## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 6 OF 26

SUBJECT

### Drug and Alcohol Policy

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: July 10, 2019

Omnitrans of negative test result is required prior to beginning safety-sensitive duties. All employees being transferred from a non-safety-sensitive function to a safety-sensitive function will also be required to have a negative pre-employment drug test result prior to beginning any safety-sensitive function. The test must be performed within 90 days of beginning any safety-sensitive duties. If a test is cancelled for any reason, the employee or applicant must retake and have a negative result prior to being hired or beginning any safety-sensitive function. Failure of a drug test will disqualify an applicant for employment for a period of two (2) years.

Omnitrans will obtain written consent from applicants to request information from previous DOT regulated employers that had employed the individual within the previous two years. If the applicant does not provide consent, he/she may not perform any safety-sensitive functions.

Pursuant to Section 655.41(a)(2), all applicants and/or employees of safety-sensitive positions will be asked during the oral interview portion of the selection process if they have ever failed or refused a DOT pre-employment drug test including requiring evidence that the applicant and/or employee has successfully completed a referral, evaluation and treatment plan.

An employee who has not performed a safety-sensitive duty for 90 consecutive days or more and has not been in the random selection pool shall take a pre-employment physical examination that includes a DOT drug test with a verified negative result before returning to safety-sensitive duties.

#### 2. Reasonable Suspicion Testing

**All safety-sensitive and non-safety-sensitive employees may be subject to a fitness for duty evaluation, to include appropriate urine and/or breath testing when there are reasons to believe that drug or alcohol use is adversely affecting job performance including, but not limited to, any employee suspected of possessing, using or being impaired by alcohol or an illegal drug, a legal drug if such use would violate this Policy or pose a safety threat, while on duty and/or in Agency uniform.**

**A reasonable suspicion referral for testing must be based upon specific, contemporaneous, articulate observations concerning appearance, behavior, speech, or body odors of the covered safety-sensitive and non safety-sensitive employee consistent with possible drug use or alcohol**





## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 7 OF 26

SUBJECT

### Drug and Alcohol Policy

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: July 10, 2019

misuse. These observations will only be made by one supervisor who has received appropriate training in detecting the signs and symptoms of drug and alcohol use and will be documented by that individual on a "Reasonable Suspicion – Individual Test Summary". A reasonable suspicion alcohol test will only be required if the reasonable suspicion observations are made just before, during or just after the period of the workday that the covered employee is required to be in compliance with this policy.

If the reasonable suspicion alcohol test is not administered within two (2) hours following the reasonable suspicion determination, the Agency will document the reasons why the test was not promptly administered. If the test is not administered within eight (8) hours following the reasonable suspicion determination, the Agency will no longer attempt to administer an alcohol test and will document the reasons for its inability to do the test.

In any reasonable suspicion testing circumstance, an Agency representative will transport the individual to the collection facility and await the completion of the collection procedure. The Agency representative will then transport the individual back to the Agency's premises where a family member or designated individual will be contacted to transport the individual from the premises. In the event no such individual is available, the Agency will make arrangements to transport the employee home. Any associated costs for post-testing transportation will be reimbursed to the individual if the reasonable suspicion test result is negative. If the individual refuses to comply with any of these procedures and attempts to operate his/her own vehicle, the Agency will take appropriate efforts to discourage him/her from doing so, up to and including contacting local law enforcement officials. Any employee failing to cooperate with any of the above procedures will be subject to disciplinary action, up to and including termination.

**Any safety-sensitive employee may not be assigned to a safety-sensitive function until a negative result has been received. An employee receiving a negative result shall be promptly returned to his/her former duties.** While awaiting test result(s), employees will be put on paid administrative leave.

### 3. Post-Accident Testing

- a) **Safety-sensitive or non-safety sensitive employees will be required to undergo alcohol and drug testing if they are involved in an accident while operating an Omnitrans vehicle (regardless of whether or not the vehicle is in revenue service), if as a result of the accident:**



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 8 OF 26

SUBJECT

### Drug and Alcohol Policy

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: July 10, 2019

- 1) An individual dies;
  - 2) An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident;
  - 3) There is any disabling damage to any vehicle involved in the accident, requiring the vehicle to be towed away from the scene
- 4) With respect to an occurrence in which the mass transit vehicle involved a bus, electric bus, van or automobile, one or more vehicles incurs disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle. Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs, including damage to motor vehicles that could have been driven, but would have been further damaged if so driven. Disabling damage does not include damages which can be remedied temporarily at the scene of the accident without special tools or parts, tire disablement without other damage (even if no spare tire is available), headlamp or taillight damage, or damage to turn signals, horn or windshield wipers which makes them inoperative;
- a) post-accident test will be conducted on all surviving covered employees whose performance could have contributed to the accident, as determined by the Agency using the best information available at the time of the decision.

Post-accident testing is stayed while the employee assists in the resolution of the accident or receives medical attention following the accident. In the event following an accident, an alcohol test is not administered within two (2) hours; the Agency will prepare and maintain record stating the reasons why the test was not promptly administered. The employee will be tested for alcohol within eight (8) hours of the accident, or the Agency will make no further effort to administer and will document the reasons why the test was not administered within eight (8) hours. In the event a drug test is not administered within 32 hours following an accident, the Agency will cease its attempts to administer further drug testing. Any employee involved in an accident must refrain from alcohol use for eight hours following the accident or until he/she undergoes a post-accident alcohol test. Any employee who leaves the scene of the accident without appropriate authorization prior to submission to drug and alcohol testing will be considered to have refused the test. Employees tested under this provision will include not only the operations personnel, but any other covered employee whose performance could have contributed to the accident.



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 9 OF 26

SUBJECT

### Drug and Alcohol Policy

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: July 10, 2019

b) The Post-Accident Individual Test Summary form shall be used by the supervisor to ensure that proper procedure is followed in post-accident drug and alcohol testing. This form will be identified with an identification number that corresponds with accident records. The form will be kept as part of the testing records.

c) Testing will not be required after non-fatal accidents if the Agency determines, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accident and that the employee's performance could not have contributed to the accident.

#### 4. Random Testing

Any safety-sensitive employees subject to the Federal Transit Administration guidelines of this policy will be required to submit to random drug and alcohol testing. The Agency will conduct random drug and alcohol tests at no less than the minimum annual percentage rate as required by the FTA.

The random selection process is completely objective and anonymous and utilizes a scientifically valid method using a computer-based random number generator matched with a random number assigned to the employee's social security number. The tests will be unannounced and the dates for the tests will be reasonably spread throughout the course of the calendar year and occur throughout the work shift. All employees will have an equal chance of being tested each time selections are made, regardless of the number of his/her previous selections, if any.

Any covered employee notified of his/her selection for random testing will be required to proceed immediately to the test site. If a covered employee is performing a safety-sensitive function at the time of notification of the random test requirement, he/she will be required to cease performing the safety-sensitive function and proceed to the testing site as soon as possible. Covered employees will only be required to submit to a random alcohol test if they are performing a safety-sensitive function, about to perform a safety-sensitive function, or have just ceased performing a safety-sensitive function.



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 10 OF 26

SUBJECT

### Drug and Alcohol Policy

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: July 10, 2019

#### 5. Refusal to Submit

**Any covered employee who refuses to submit to an alcohol or drug test will be prohibited from performing or continuing to perform a safety-sensitive function and be subject to termination. "Refusal to submit" to an alcohol or drug test constitutes a positive result, a violation of this policy, and includes the following conduct:**

- a. **Failing to provide adequate breath for alcohol testing, without a valid medical explanation after an individual has received notice of a required breath test;**
- b. **Failing to provide an adequate urine sample for drug testing, without a genuine inability to provide a specimen (as determined by a medical evaluation), after an individual has received notice of a required urine test;**
- c. **Engaging in conduct that clearly obstructs the testing process, including the failure or refusal to sign any document or form required under this policy or by any party authorized to carry out testing under this policy;**
- d. **Failing to remain readily available for testing, including notifying the Agency of his/her location if he/she leaves the scene of the accident, when an individual is involved in an accident as defined in this policy; and**
- e. **Failure of the employee to report to the collection/testing site in a timely manner, as defined by Omnitrans, once notification is given without a reasonable excuse for a required test (except for a pre-employment test).**
- f. **Leaving a collection facility prior to a test completion (except in a pre-employment test where leaving before the test begins is not considered a test refusal).**
- g. **Failure to permit an observed or monitored collection when required.**
- h. **Failure to take a second test when required (i.e. a cancelled test).**
- i. **Failure to undergo a medical exam when required.**



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 11 OF 26

SUBJECT

### Drug and Alcohol Policy

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: July 10, 2019

- j. For an observed collection, failure to follow the observer's instructions to raise clothing above the waist, lower clothing and underpants and turn around.
- k. Possessing or wearing a prosthetic or other device that could be used to interfere with the collection process.
- l. Admitting to the adulteration or substitution of a specimen to the collector or MRO.
- m. MRO's verification of a test as adulterated or substituted constitutes a refusal.

#### D. ALCOHOL TESTING METHODOLOGIES

##### 1. Alcohol Testing Personnel

###### a) Breath Alcohol Technician

All alcohol testing required under this policy will be carried out by a breath alcohol technician ("BAT") trained to proficiency in the operation of the evidential breath testing device ("EBT") being used by the Agency for alcohol testing and in the alcohol testing procedures required herein. The BAT will be required to successfully complete a course of instruction that meets the standards of the National Highway Traffic Safety Administration (NHTSA) model course and documents that the BAT has demonstrated competence in the operation of the specific EBT being used by the Agency.

###### b) Screening Test Technician (STT)

Anyone qualified to act as a Breath Alcohol Technician may act as a Screening Test Technician (STT), provided that he/she has demonstrated proficiency in the operation of the non-evidential screening device to be used by that individual. Any other individual may act as an STT as long as he or she successfully completes the Department of Transportation model course, or a course of instruction determined by the Department of Transportation's Office of Drug and Alcohol Policy Compliance to be equivalent to it.

##### 2. Alcohol Testing Device

- a) **Evidential Breath Testing Device** for the evidential testing of alcohol is listed in the "Conforming Products List (CPL) of Evidential Breath Measurement Devices." For confirmatory breath tests, the Agency will use an EBT that is capable of providing a printed result of each breath test in triplicate (or three consecutive identical copies). This device



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 12 OF 26

SUBJECT

### Drug and Alcohol Policy

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: July 10, 2019

will be capable of assigning a unique and sequential number to each completed test. The EBT will also be able to distinguish alcohol from acetone at the 0.02 alcohol concentration level and be capable of testing an air blank prior to each collection of breath and performing an external calibration check.

- b) In order to be used for any alcohol testing under this policy, the EBT must have a quality assurance plan (QAP) developed by the manufacturer and approved by National Highway Traffic Safety Administration (NHTSA). The Agency or its designated agent will ensure compliance with the QAP for each EBT it uses for alcohol testing under this policy.

#### 3. Alcohol Testing Site

- a) The Agency will use an alcohol testing site that affords visual and aural privacy to the individual being tested sufficient to prevent unauthorized persons from seeing or hearing test results. The alcohol testing site will be secure, and no unauthorized persons will be permitted access to it at any time when testing is being conducted or when the EBT remains unsecured. Alcohol testing will take place at locations designated by the Agency.
- b) In unusual circumstances (e.g., when it is essential to conduct a test outdoors at the scene of an accident) a test may be conducted at a place other than a designated testing facility, but the Agency or the BAT will ensure that visual and aural privacy will be provided to the greatest extent practicable.

#### 4. The Breath Alcohol Testing Form

- a) The Agency will use a Breath Alcohol Testing Form prescribed by the Department of Transportation for EBT alcohol screening devices.

### E. ALCOHOL TESTING PROCEDURES

#### 1. Screening and Confirmation Testing

All alcohol testing conducted under this policy will be done in accordance with the procedures outlined in 49 CFR Part 40, Subpart L. After providing photo identification to the BAT or STT, the employee and the BAT/STT will complete the Breath Alcohol Testing Form. Any employee who refuses to sign the acknowledgment of testing in Step 2 of the form will be considered to have refused to test. The employee will follow the BAT/STT's instructions and provide a breath sample for the initial test. If the result of the test is  $<0.02$  alcohol concentration, the test



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 13 OF 26

SUBJECT

### Drug and Alcohol Policy

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: July 10, 2019

is considered negative and the process is complete. The BAT/STT will complete and sign the breath alcohol testing form.

If the initial alcohol test result is 0.02 or greater, a confirmation test, using an EBT capable of printing the test results, will be conducted. After a waiting period of at least 15 minutes, during which the employee is observed and requested not to take anything by mouth or to the extent possible, not to belch during the waiting period; the employee will be asked to provide a breath sample.} The confirmation test will be completed within 30 minutes of the completion of the screening test. The purpose of the waiting period is to ensure that no residual mouth alcohol is present for the confirmation test. If the confirmation test result is >0.02, the BAT will immediately notify the Agency representative, and the employee will remain at the testing facility until provided transportation home. The employee and the BAT will complete and sign the breath alcohol testing form and a copy of the form, including the test results, will be provided to the employee.

#### 2. Inability to Provide a Sample

The employee will be asked to submit to a breath alcohol test. If the employee is unable to provide, or alleges, he/she is unable to provide a breath sufficient to permit a valid breath test because of a medical condition, the BAT/STT shall again instruct the employee to provide an adequate amount of breath. If the employee cannot provide an adequate breath sample, the BAT/STT shall discontinue the testing process, notify the Agency representative, and the employee shall, as soon as practical, be evaluated by a physician, designated by the Agency. The physician shall determine if there is a medical condition or diagnosis that prevents the employee from providing an adequate breath sample. If the physician is unable to document a medical condition or diagnosis responsible for the employee's failure to provide an adequate sample, it is considered a refusal to test.

#### 3. Invalid Alcohol Test Results

Alcohol results >0.02 on the confirmation test are deemed invalid if certain critical errors or omissions occur in the testing process. The reasons for invalidation of a test result include: failure of the EBT/STT on the next external calibration check; less than 15 minutes elapsed between screening and conformation; omission of or failure on an air blank before the confirmation test; failure of the BAT/STT to sign the Breath Alcohol Testing Form; no printed EBT result; or the BAT/STT's failure to note employee's refusal to sign the final certification statement in step 4 of the Breath Alcohol Testing Form; the sequential test number





## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 14 OF 26

SUBJECT

### Drug and Alcohol Policy

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: July 10, 2019

or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result. If an event occurs during the testing process, or an error is discovered, that would invalidate a confirmation test result, the employee shall be subject to repeat the testing process, if practical.

#### 4. Refusal to Test

**For purposes of alcohol testing, the following are considered refusals to test:**

- a) The employee refuses to sign Step 2 of the Breath Alcohol Testing Form
- b) The employee refuses to attempt to provide a sample
- c) The employee fails to cooperate with the testing process
- d) The employee is unable or unwilling to provide an adequate breath sample and the examining physician does not find a medical condition or diagnosis that prevents the employee from providing the sample
- e) The employee fails to remain readily available for testing following an accident as defined in this policy.
- f) The employee fails to report to the collection/testing site for a required test in a timely manner, as defined by Omnitrans, once notification is given without a reasonable excuse.
- g) Failure to submit to a medical examination when required.
- h) Any employee who is deemed to have "refused to test" will be immediately removed from performing safety sensitive functions as defined by the FTA rules (49 CFR Part 655). The "refusal to test" constitutes a positive result. The Agency will impose disciplinary action as outlined in this policy.

#### F. CONTROLLED SUBSTANCE ABUSE TESTING METHODOLOGIES

##### 1. Laboratory Analysis

**All urine specimens tested for drugs of abuse under this policy will be analyzed at a laboratory certified by the Department of Health and Human Services (DHHS), Substance Abuse and Mental Health Services Administration (SAMHSA). +**

##### 2. Initial Screening

**All specimens will be tested for the drug or drug classes listed below using an immunoassay screen approved by the Food and Drug Administration (FDA). The immunoassay screen will use cut-off levels established by the DHHS to eliminate negative specimens from further consideration. Any initially positive test will be subject to confirmation through an additional, more precise testing methodology.**





## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 15 OF 26

SUBJECT

### Drug and Alcohol Policy

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: July 10, 2019

#### 3. Confirmatory Tests

**Any urine specimen identified as positive on the initial screen will be confirmed by a second analytical procedure which uses a different chemical technique and procedure. Gas chromatography/mass spectrometry (GC/MS) methodology will be used to conduct the confirmation analysis. GC/MS analysis will use cut-off levels established by the DHHS for confirmation. Any specimen that does not contain drug or drug metabolites above the GC/MS confirmation cut-off levels will be reported by the laboratory as negative.**

#### 4. Specimen Adulteration/Dilution

**When appropriate the laboratory may conduct analyses to determine if the specimen has been adulterated. Adulteration tests include, but are not limited to, specific gravity, creatinine, and pH. In addition, the laboratory may conduct additional analyses to identify or detect a specific adulterant added to the urine specimen. If the laboratory identifies an adulterant added to the specimen, the laboratory will report the specimen as adulterated, presence of (the substance identified).**

**A urine sample will be considered dilute when the creatine concentration is equal to or greater than 2 mg/dL, but less than 20 mg/dL, and the specific gravity is greater than 1.0010, but less than 1.0030.**

#### 5. Laboratory Reporting of Results

**The laboratory will report all test results to the Medical Review Officer (MRO). The reporting of test results must be by confidential, secure electronic (not telephone) or hard copy transmission. The laboratory will send to the MRO a copy of the custody and control form bearing the test results. Test results will be reported as negative, positive (if positive, the drug(s) found will be specified), canceled, unsuitable for testing, test not performed, or specimen adulterated.**

**The laboratory shall only report quantitative levels of positive results to the MRO upon his/her specific request. Quantitative levels shall only be released to the employer if the employer is involved in an administrative or legal proceeding brought by the employee in challenging a test result. Otherwise, the Agency will receive a result of either "Positive- with the substance being identified", or "Negative". The laboratory will provide a quarterly statistical report to the Agency summarizing the testing activity for each quarter.**

#### 6. Specimen Retention and Storage

**Negative specimens will be destroyed and discarded by the laboratory after results are reported to the MRO. Positive specimens will be retained in long-term frozen storage (-20 degrees C or less) for a minimum of one (1) year.**



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 16 OF 26

SUBJECT

### Drug and Alcohol Policy

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: July 10, 2019

Split specimens of positive results will be retained in frozen storage for at least 60 days or until the MRO provides a written request for the split to be transferred to another laboratory for analysis (whichever occurs first).

#### 7. Split Specimen Analysis

When a laboratory receives a split specimen (Bottle B) from the laboratory that conducted the confirmation analysis of Bottle A, the laboratory will conduct the analysis of Bottle B using GC/MS methodology. The specimen will be reported as a "reconfirmation of the drug(s)" if there is any detectable presence of the drug(s); GC/MS cut off levels do not apply. The results of the split specimen analysis are reported to the MRO. The split specimen will be retained in long-term frozen storage for a minimum of one (1) year by the laboratory that conducted the split specimen analysis. (Or longer if litigation concerning the test is pending).

### G. CONTROLLED SUBSTANCES TESTING PROCEDURES

#### 1. Urine Specimen Collection

Any person requested to undergo a drug test will be required to provide a urine sample at a designated collection site. Photo identification will be required. In order to ensure integrity of the specimen collection procedure, a standard Drug Testing Custody and Control Form will be used. This form will be completed by the employee and the specimen collector and will be forwarded along with the urine sample to a designated laboratory. The MRO, employee, collector and Agency representative also receive a copy of the Drug Testing Custody and Control Form.

All urine specimens will be collected in a clean, single-use specimen bottle(s) securely wrapped until filled with the specimen. A clean, single-use collection container that is securely wrapped until used may also be provided. The specimen bottle(s) will be labeled and sealed with tamper-evident tape/label by the collector in the employee's presence. The employee will initial the bottle(s) seals.

Any person requested to undergo a drug test will be provided a copy of written specimen collection procedures, which must be followed by the individual and the collection site personnel.

#### 2. Specimen Collection Sites

The Agency will designate specimen collection sites/facilities. The facilities will have the personnel, materials, equipment and supervision necessary to provide collection in accordance with 49 CFR Part 40. The collection sites/facilities listed in Appendix D have been designated for specimen collections conducted under this policy.



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 17 OF 26

SUBJECT

### Drug and Alcohol Policy

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: July 10, 2019

Procedures shall provide for the collection site to be secure. If a facility cannot be dedicated solely to drug testing, the portion of the facility used for testing shall be secured during the drug testing. A facility normally used for other purposes, such as a public rest room or hospital examining room, may be secured by visual inspection to ensure other persons are not present and undetected access is not possible.

#### 3. Chain of Custody and Collection Control

The collection site personnel shall keep the individual's specimen bottle within sight both before and after the individual has urinated. After the specimen is collected, it shall be properly sealed and labeled. The chain-of-custody block on the Drug Testing Custody and Control Form shall be executed by authorized personnel upon receipt of the specimen. This form shall be used for maintaining control and accountability of each specimen from the point of collection to shipment/transportation of the specimen.

#### 4. Individual Privacy

Collection procedures shall allow urine specimens to be provided by the individual in private, unless there is reason to believe that the individual may alter or substitute the specimen, as set forth below:

- a) The employee has presented a urine specimen that falls outside the normal temperature (32°-38° C/ 90°-100° F)
- b) The collection site person observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample (e.g., substitute urine in plain view, blue dye in specimen presented, etc.).
- c) An employee may also be required to provide a urine specimen under direct observation in the event specimen adulteration is suspected under Section F.4. and H.4. of this policy. However, a higher-level supervisor of the collection site or a designated employer representative shall review and concur in advance with any decision by a collection site person to obtain a specimen under the direct observation of a same gender collection site person based upon the circumstances described above. During an observed collection, the employee will be required to raise and lower clothing and turn around in plain view as well as allowing the observer to view the urine stream from the donor to the collection container. Failure to follow the observers instructions during an observed collection to raise clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if the employee has any type of prosthetic or other device that could be used



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 18 OF 26

SUBJECT

### Drug and Alcohol Policy

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: July 10, 2019

to interfere with the collection process will be considered a refusal per Section 40.191(a) (9) (10).

- d) If the sample is being collected from an employee in need of medical attention (e.g., as part of a post-accident test given in an emergency medical facility), necessary medical attention shall not be delayed in order to collect the specimen. Specimens will not be collected from deceased or comatose employees.

#### 5. Insufficient Volume

**Original specimen (with insufficient volume) will be discarded unless temperature is out of range or shows evidence of adulteration or tampering. The individual will remain at the collection site until process is complete.**

**The individual will be allowed to drink up to forty (40) ounces of fluid. If the specimen is not provided within three (3) hours of the first attempt, the collection process will be discontinued. The individual -will then be referred to the MRO.**

**The individual will then have five (5) days to obtain a medical examination. The referring physician must be acceptable to the MRO. The medical examination will look for ascertainable physiological conditions or documented pre-existing psychological disorders present at the time of the examination.**

#### 6. Specimen Integrity and Identity

**The Agency, the employee, and the collection site shall take appropriate precautions to preserve the integrity of the urine specimen by ensuring that it is not adulterated or diluted during the collection procedure and that the urine specimen tested is that of the person from whom it was collected. Collection site personnel will be responsible for maintaining the integrity of the specimen collection and transfer process, but employees are expected to cooperate with collection site personnel and to exercise good faith in conjunction with the specimen collection procedures.**

#### 7. Split Specimen Procedures

**There must be a sufficient volume of each specimen to allow for it to be subdivided, secured and labeled in the presence of the tested individual and retained in a secured manner to prevent the possibility of tampering. This will allow an individual the opportunity to request a retest of the specimen by an appropriate laboratory in accordance with Section F.7. of this policy.**



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 19 OF 26

SUBJECT

### Drug and Alcohol Policy

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: July 10, 2019

#### 8. Transportation to Laboratory

**Collection site personnel shall arrange to ship the collected specimens to the drug-testing laboratory. The specimens shall be placed in a container designed to minimize the possibility of damage during shipment (e.g., specimen boxes and/or padded mailers); and those containers shall be securely sealed to eliminate the possibility of undetected tampering with the specimen and/or form. The collection site person shall ensure that the chain of custody documentation is enclosed in each container sealed for shipment to the drug-testing laboratory.**

#### 9. Failure to Cooperate

**Any employee required to provide a urine sample may be asked to sign a consent or release form authorizing the collection of the specimen, analysis of the specimen for designated controlled substances, and release of the results to the employer. The employee will not be required to waive liability with respect to negligence on the part of any person participating in the collection, handling or analysis of the specimen or to indemnify any person for the negligence of others.**

**If the employee refuses to cooperate during the collection process (e.g., refusal to provide a complete specimen, complete paperwork, initial specimen), the collection site person will inform the Agency representative and document the employee's conduct on the Drug Testing Custody and Control Form. Employees are expected to exercise good faith and cooperate during the collection process and failure to do so will subject the employee to disciplinary action, up to and including termination, independent and regardless of the results of any subsequent drug test.**

### H. CONTROLLED SUBSTANCE TEST RESULTS

#### 1. Medical Review Officer (MRO)

**All confirmed positive and negative test results will be reported by the laboratory directly to the medical review officer (MRO) prior to any results being released to the Agency. The MRO will be a licensed physician with knowledge of substance abuse disorders who has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information. The MRO will review and consider possible alternative medical explanations for the positive test result as well as the chain of custody to ensure that it is complete and sufficient on its face. The Agency will designate an MRO for its controlled substance testing program.**

#### 2. MRO Duties



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 20 OF 26

SUBJECT

### Drug and Alcohol Policy

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: July 10, 2019

**The MRO will perform the following functions for the Agency:**

- a) **Review the results of drug testing before they are reported to the Agency;**
- b) **Review and interpret each confirmed positive test result to determine if there is an alternative medical explanation for the confirmed positive test result. The MRO may include these steps:**
  - 1) **Conducting a medical interview with the individual tested;**
  - 2) **Reviewing the individual's medical history and any relevant biomedical factors;**
  - 3) **Reviewing all medical records made available by the individual tested to determine if a confirmed positive test resulted from legally purchased medication.**
- c) **Requiring, if necessary, that the original specimen be reanalyzed to determine the accuracy of the reported test result; and**
- d) **Verifying that the laboratory report and assessment are correct.**

### 3. Action on Positive Test Results

**Prior to making a final decision to verify a positive test result for an individual, the MRO will give the individual an opportunity to discuss the test result. The MRO will contact the individual directly, on a confidential basis, to determine whether the individual wishes to discuss the test result. A staff person under the MRO's supervision may make the initial contact and a medically licensed or certified staff person may gather information from the individual. Except as provided below, the MRO will talk directly with the individual before verifying a test as positive.**

**If, after making and documenting all reasonable efforts to contact the individual, the MRO is unable to reach the individual directly, the MRO will contact a designated Agency representative who will direct the individual to contact the MRO as soon as possible. If it becomes necessary to reach the individual through an Agency representative, the representative will utilize procedures to ensure, to the maximum extent practicable, the requirement that the individual contact the MRO is held in confidence.**

**The MRO may verify a test as positive without having communicated directly with an individual about the results in three circumstances:**

- a. **If the individual expressly declines the opportunity to discuss the test;**
- b. **If the designated Agency representative has successfully made and documented a contact with the individual and instructed him/her to contact the MRO, and more than five (5) days have passed since the individual was successfully contacted; or**





## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 21 OF 26

SUBJECT

### Drug and Alcohol Policy

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: July 10, 2019

- c. If neither the MRO nor employer has successfully contacted the employee after fourteen (14) days of reasonable effort.

If a test is verified as positive because of an individual's failure to contact the MRO, the individual will have the opportunity to provide the MRO with evidence documenting that serious illness, injury or other circumstances unavoidably prevented him/her from timely contacting the MRO. The MRO, on the basis of such information, may reopen the verification and allow the individual to present information concerning a legitimate explanation for the confirmed positive test. If the MRO concludes that there is a legitimate explanation, the MRO will declare the test to be negative.

In verification of an opiate positive result the MRO may require that the employee submit to a medical examination by an Agency-designated physician. The purpose of the examination is to determine if there is clinical evidence of unauthorized use of an opiate substance. An employee's refusal to undergo the medical examination may result in a positive test determination.

#### 4. MRO Determinations

If the MRO determines, after appropriate review, that there is a legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the MRO will report the test as negative.

If the MRO determines, after appropriate review, that there is no legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the MRO shall refer the individual tested to the Agency for further proceedings in accordance with this policy, report the test as positive, and provide the name of drug(s) detected.

If the MRO determines, based upon his/her review of the laboratory inspection reports, quality assurance and quality control data, and other drug test results, that a particular drug test result is scientifically insufficient for further action, the MRO will conclude that the test is canceled.

If the MRO determines that a specimen is unsuitable for testing, the MRO will cancel the test. The MRO will provide medical review and verification for all laboratories and reported substituted specimen results. If the MRO receives a laboratory report identifying the specimen as adulterated, the MRO will report the test as adulterated and inform the Agency that the employee has "refused to test".



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 22 OF 26

SUBJECT

### Drug and Alcohol Policy

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: July 10, 2019

5. Disclosure of Information

**The MRO will not disclose to any third-party medical information provided by the individual to the MRO as part of the testing verification process, except as provided below:**

- a. **Before obtaining medical information from the employee as part of the verification process, the MRO will advise the employee that the information may be disclosed to third parties and of the identity of any parties to whom the information may be disclosed.**

6. Split Specimen Procedures

**The MRO will notify each employee who has a verified positive test that he/she has seventy-two (72) hours in which to request a test of the split specimen. If the employee requests an analysis of the split specimen within seventy-two (72) hours of such notice, the MRO will direct, in writing, the laboratory to provide the split specimen to another DHHS-certified laboratory for analysis. The employee will not be allowed to request a reanalysis of the primary specimen and any retest will be at the employee's expense.**

**If the analysis of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, or if the split specimen is unavailable, inadequate for testing, or untestable, the MRO will cancel the test and report the cancellation and the reasons for it to the DOT, the employer and the employee. However, because some analytes deteriorate or are lost during freezing and/or storage, quantitation for a retest is not subject to a specific cutoff requirement but must provide data sufficient to confirm the presence of the drug or metabolite.**

**If an employee has not contacted the MRO within seventy-two (72) hours, the employee may present the MRO with information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the verified positive test, or other circumstances unavoidably prevented the employee from timely contacting the MRO. If the MRO concludes that there is a legitimate explanation of the employee's failure to contact him/her within 72 hours, the MRO will direct that analysis of the split specimen be performed.**

I. CONFIDENTIALITY AND RECORDKEEPING

1. Confidentiality

**The Agency will maintain all records generated under this policy in a secure manner so that disclosure to unauthorized persons does not occur. Thus, the results of any tests administered under this policy and/or any other information generated pursuant to this policy will not be disclosed or released to anyone without the express written consent of the employee,**





## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 23 OF 26

SUBJECT

### Drug and Alcohol Policy

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: July 10, 2019

except where otherwise required or authorized by law. In addition, the Agency's contract with its designated laboratory requires it to maintain all employee test records in confidence.

However, the laboratory or the Agency may disclose information required to be maintained under this policy to the employee, the employer or the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol and/or drug test administered under this policy, or from the employer's determination that the employee engaged in conduct prohibited by this policy (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee.)

#### 2. Access to Facilities and Records

Upon written request by any covered employee, the Agency will promptly provide copies of any records pertaining to the employee's use of alcohol or drugs, including any records pertaining to his or her alcohol or drug tests. Access to a covered employee's records will not be contingent upon payment for records other than those specifically requested.

The Agency will also permit access to all facilities utilized and alcohol or drug testing documents generated in complying with the requirements of 49 CFR Part 655 to the Secretary of Transportation, any DOT agency with regulatory authority over the employer or any of its covered employees, or to a State oversight agency. When requested by the National Transportation Safety Board as part of an accident investigation, the Agency will disclose information related to the employer's administration of a post-accident alcohol and/or drug test administered following the accident under investigation.

Records will also be made available to an identified person or a subsequent employer upon receipt of a written request from an employee, but only as expressly authorized and directed by the terms of the employee's written consent. The subsequent release of such information by the person receiving it will be permitted only in accordance with the terms of the employee's consent.

#### J. EMPLOYEE ASSISTANCE PROGRAM/SUBSTANCE ABUSE PROFESSIONAL

##### 1. Employee Education

The Agency will provide employees subject to this policy with education materials explaining the requirements of the Federal Transit Administration drug and alcohol regulations and the Agency policies and procedures for meeting them. In addition, employees will be provided with



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 24 OF 26

SUBJECT

### Drug and Alcohol Policy

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: July 10, 2019

information concerning the effects of drug use and alcohol misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol or drug problem. This information will be included in the following:

- a. Distribution of an employee Personnel Policy Manual.
- b. Display and distribution of a community service hot-line telephone number for employee assistance.

Covered employees will receive at least sixty (60) minutes of training on the effects and consequences of prohibited drug use on personal health, safety and the work environment and on the signs and symptoms which may indicate prohibited drug use.

Copies of the above materials and this policy will be distributed to each covered employee prior to the start of alcohol and drug testing required herein and to each employee subsequently hired or transferred into a position requiring the performance of a safety-sensitive function covered by this policy. Each employee who receives a copy of these materials will be required to sign a statement certifying that he or she has received a copy of the same. The Agency will retain the original of the signed certificate and will provide a copy to the employee, if requested. The Agency will also provide written notice to representatives of employee organizations as to the availability of this information.

Any questions about the requirements of this policy should be directed to the program contact individual listed in Appendix D.

#### 2. Supervisory Training

Any individual designated to determine whether reasonable suspicion exists to require a covered employee to undergo a drug or alcohol test under this policy will be required to receive at least sixty (60) minutes of training on alcohol misuse and 60 minutes of training on drug use. This training will cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and prohibited drug use.

#### 3. Referral, Evaluation and Treatment

##### a. Available Resources

Any employee who engages in conduct prohibited by this policy will be provided with information about the resources available for evaluating and resolving problems associated with the misuse of alcohol or prohibited drug use, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 25 OF 26

SUBJECT

### Drug and Alcohol Policy

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: July 10, 2019

#### b. Substance Abuse Evaluation

Although an employee's employment with the Agency may be **terminated for a violation of this policy, employees will be advised to undergo an evaluation by an appropriate substance abuse professional, who will determine what, if any, assistance the employee may need in resolving problems associated with alcohol misuse and/or prohibited drug use.** This requirement will apply regardless of whether such conduct is discovered as a result of a positive drug or alcohol test, or independent employer knowledge. **The referral, evaluation and rehabilitation requirements outlined above apply to job applicants who refuse to submit to or test positive in a pre-employment drug test.**

#### 4. Substance Abuse Professional (SAP)

**For purposes of this policy, a substance abuse professional (SAP) is defined as a licensed physician (M.D. or D.O.), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by DOT, NAADAC or ICRC) who has knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol-related disorders.**

### K. DISCIPLINE

**In addition to the removal from safety-sensitive functions required by Federal Transit Administration Regulations,** the Agency will take the following disciplinary action against any individual who violates this policy.

#### 1. Applicants

**An individual who tests positive on a pre-employment or pre-duty test for a prohibited drug will not be hired for a covered function position.** Failure of a drug or alcohol test will disqualify an applicant for employment for a period of two (2) years. **Information on referral to a substance abuse professional will be provided to all applicants who test positive.**

#### 2. Employees

**An employee who has a confirmed alcohol concentration of 0.02 or greater but less than 0.04 will result in removal from his position for eight (8) hours unless a retest results in a concentration measure of less than 0.02. An alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy.**

**Any employee that has a confirmed positive drug or alcohol test will be removed from his/her position, informed of educational and rehabilitation programs available, and evaluated by a Substance Abuse Professional**



## PERSONNEL POLICY MANUAL

POLICY 701 PAGE 26 OF 26

SUBJECT

### Drug and Alcohol Policy

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: July 10, 2019

**(SAP).** A positive drug and/or alcohol test will also result in termination of employment.

#### L. RECORDKEEPING AND REPORTING

##### 1. Retention of Records

**The Agency will maintain records relating to this policy as outlined in 49 CFR Part 655. These records will be maintained in a secure location with controlled access for the specified periods of time, measured from the date of the document's or data's creation.**

##### 2. Management Information System

**The Agency will prepare and submit by March 15 of each year, two (2) summary results reports of all drug and alcohol testing performed under this policy. The Agency will also submit these reports for all contractors who were doing contracted services for the covered year. These reports will be submitted to the FTA Office of Safety and Security. The alcohol summary will contain all of the information required by 49 CFR Part 655 and the drug summary will contain all the information in 49 CFR Part 655.**



## APPENDIX A

### **OmniTrans' Safety-Sensitive Function Job Classifications**

Dispatcher  
Dispatch Supervisor  
Coach Operator  
Field Supervisor  
Fleet Safety and Training Supervisor  
Fleet Safety and Training Instructor  
Shift Supervisor  
Equipment Mechanic  
Mechanic Helper  
Tire Repair Worker  
Utility Service Worker  
Any Other Employee who holds a Commercial Driver's License and  
Performs a Function that Requires a Commercial Driver's License.



## APPENDIX B

### Company Drug and Alcohol Testing Program Contact

For all questions concerning the Agency's policy or implementation of the Agency's drug and alcohol testing program, employees should contact the individual named below:

Name: Suzanne Pfeiffer  
Title: Director of Human Resources  
Address: 1700 W. 5<sup>th</sup> Street  
San Bernardino, CA 92411  
Phone: (909) 379-7261

ITEM # E7

**DATE:** July 10, 2019

**TO:** Board Chair David Avila and Members of the Omnitrans Board of Directors

**THROUGH:** P. Scott Graham, CEO/General Manager

**FROM:** Suzanne Pfeiffer, Director of Human Resources

**SUBJECT:** **RE-ORGANIZATION OF HUMAN RESOURCES DEPARTMENT  
AND RE-CLASSIFICATION OF THE HUMAN RESOURCES  
ANALYST, UPDATE POLICY 402**

### **FORM MOTION**

Approve the re-organization of the Human Resources Department, re-classification of the Human Resources Analyst, and update to Policy 402.

*This item was reviewed by the Administrative and Finance Committee at its June 13, 2019 meeting and recommended to the Board of Directors for approval.*

### **BACKGROUND**

Over the last year, the Director of Human Resources has reviewed the duties, classifications, salary ranges, and reporting structure of the Human Resources Department. Based on this internal review, along with an external review of similar sized transit and government agencies, changes are being recommended. While it would not typically be a Board action item to change titles and reporting structure, a recommendation to re-classify one employee from an Analyst to a Senior Analyst is recommended.

The incumbent has been supervising two employees and performing additional duties since January 2019. Based on the level of accountability and responsibility the position of Human Resources Analyst should be a Level V and is currently a Level VI.

### **FUNDING SOURCE**

This position is funded through current budget.

Department: Human Resources  
Account: Various Wages and Benefits

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

### **CONCLUSION**


Approve the re-organization of the Human Resources Department, re-classification of the Human Resources Analyst, and update to Policy 402.

Approval of this agenda item supports the Fiscal Year 2019 Management Plan, Workforce Stability.

PSG: SP

Attachments: A. Policy 402 Redline  
B. Department Organization Chart



 <b>PERSONNEL POLICY MANUAL</b>				POLICY      402      PAGE    1 OF    3		
<b>SUBJECT</b>  Salary Ranges Management Confidential Classifications				APPROVED BY OMNITRANS BOARD OF DIRECTORS  DATE: June 5, 2019 July 3, 2019		

I. Purpose  
To state Omnitrans' policy on salary ranges for Management and Confidential classifications.

II. Scope  
All Departments

III. Procedure  
  
A. The Director of Human Resources is responsible for compensation administration and will modify and issue, from time to time, pay ranges and guidelines for salary adjustments as approved by the Board of Directors.

Job Level	Job Title	FLSA	Salary Breakdown	Pay Range		
				Minimum	Mid-Point	Maximum
1	(reserved for future consideration)					
2	Director of Finance Director of Human Resources Director of Information Technology Director of Maintenance Director of Marketing & Planning Director of Operations Director of Procurement Director of Rail Operations Director of Safety & Regulatory Compliance Director of Special Transportation Services (STS) Director of Strategic Development	Exempt	Bi-weekly Monthly Annual	\$ 3,952.15 \$ 8,563.00 \$102,756.00	\$ 4,907.08 \$ 10,632.00 \$127,584.00	\$ 5,862.46 \$ 12,702.00 \$152,424.00
3	Accounting Manager Contracts Manager Database Manager Development Planning Manager Employee Relations Manager Facility Manager Maintenance Manager Safety & Regulatory Compliance Manager Service Planning Manager Transportation Manager Treasury Manager Rail Compliance Officer	Exempt	Bi-weekly Monthly Annual	\$ 3,228.46 \$ 6,995.00 \$ 83,940.00	\$ 3,999.69 \$ 8,666.00 \$ 103,992.00	\$ 4,771.38 \$ 10,338.00 \$ 124,056.00
4	Capital Projects Services Manager Materials Manager Network Administrator Senior Contract Administrator Special Transportation Services Manager System Coordinator Technical Services Manager	Exempt	Bi-weekly Monthly Annual	\$ 2,968.62 \$ 6,432.00 \$ 77,184.00	\$ 3,498.46 \$ 7,580.00 \$ 90,960.00	\$ 4,028.77 \$ 8,729.00 \$ 104,748.00

153



# PERSONNEL POLICY MANUAL

POLICY 402 PAGE 2 OF 3

SUBJECT

## Salary Ranges Management Confidential Classifications

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: June 5, 2019 July 3, 2019

Job Level	Job Title	FLSA	Salary Breakdown	Pay Range		
				Minimum	Mid-Point	Maximum
5	Application Developer	Exempt	Bi-weekly	\$ 2,575.85	\$ 3,110.77	\$ 3,583.85
	Application Specialist		Monthly	\$ 5,581.00	\$ 6,740.00	\$ 7,765.00
	Assistant Transportation Manager		Annual	\$ 66,972.00	\$ 80,880.00	\$ 93,180.00
	Business Intelligence Analyst					
	Contract Administrator					
	Customer Service Manager					
	Dispatch Supervisor					
	Environmental/Occupational Health & Safety Specialist					
	Facility Supervisor					
	Fleet Safety & Training Supervisor					
	HR Leave Administrator-Sr. Human Resources Analyst (title change only - 2 FTE: 1 HR Analyst; 1 HR Leave Administrator)					
	Security & Emergency Preparedness Coordinator					
	Maintenance Supervisor-STS					
	Marketing Manager					
	Network Engineer					
	Programs Administrator-STS					
	Purchased Transportation Administrator					
	Safety & Regulatory Compliance Specialist					
	Sr. Executive Assistant to the CEO/GM Clerk of the Board (title change only)					
	Senior Financial Analyst					
	Shift Supervisor					
	Systems Engineer					
	Systems Specialist					
	Web Designer					
6	Accountant	Exempt	Bi-weekly	\$ 2,268.92	\$ 2,718.46	\$ 3,168.46
	Executive Staff Assistant		Monthly	\$ 4,916.00	\$ 5,890.00	\$ 6,865.00
	Field Supervisor		Annual	\$ 58,992.00	\$ 70,680.00	\$ 82,380.00
	Fleet Safety & Training Instructor					
	Human Resources Analyst					
	Human Resources Specialist (title change to Human Resources Analyst)					
	Scheduling Analyst					
	Sales Supervisor					
	Stops and Stations Supervisor					
	Transit Technical Trainer					



# PERSONNEL POLICY MANUAL

POLICY 402 PAGE 3 OF 3

## SUBJECT

### Salary Ranges Management Confidential Classifications

APPROVED BY OMNITRANS  
BOARD OF DIRECTORS

DATE: June 5, 2019 July 3, 2019

7	Dispatcher Department Senior Secretary	Non-Exempt	Hourly Bi-weekly Monthly Annual	\$ 25.89 \$ 2,070.92 \$ 4,487.00 \$ 53,844.00	\$ 31.03 \$ 2,482.15 \$ 5,378.00 \$ 64,536.00	\$ 36.16 \$ 2,892.92 \$ 6,268.00 \$ 75,216.00
	Contract Review Analyst Marketing Specialist Planner I Rail Operations Analyst Senior Fleet Analyst	Exempt				

Job Level	Job Title	FLSA	Salary Breakdown	Pay Range		
				Minimum	Mid-Point	Maximum
8	Administrative Secretary Client Relations Coordinator-STS Fleet Analyst Human Resources Assistant <del>Technician</del> (title change only) Paratransit Eligibility Technician Payroll Technician Travel Trainer-STS Warranty Coordinator	Non-Exempt	Hourly Bi-weekly Monthly Annual	\$ 22.58 \$ 1,806.46 \$ 3,914.00 \$ 46,968.00	\$ 26.30 \$ 2,104.15 \$ 4,559.00 \$ 54,708.00	\$ 30.02 \$ 2,401.85 \$ 5,204.00 \$ 62,448.00
9	Human Resources <del>Clerk</del> <del>Assistant</del> (title change only) Administrative Assistant-STS Class B Technician-STS	Non-Exempt	Hourly Bi-weekly Monthly Annual	\$ 18.60 \$ 1,488.00 \$ 3,224.00 \$ 38,688.00	\$ 21.73 \$ 1,738.62 \$ 3,767.00 \$ 45,204.00	\$ 24.85 \$ 1,988.31 \$ 4,308.00 \$ 51,696.00

Range changes occur every two years.

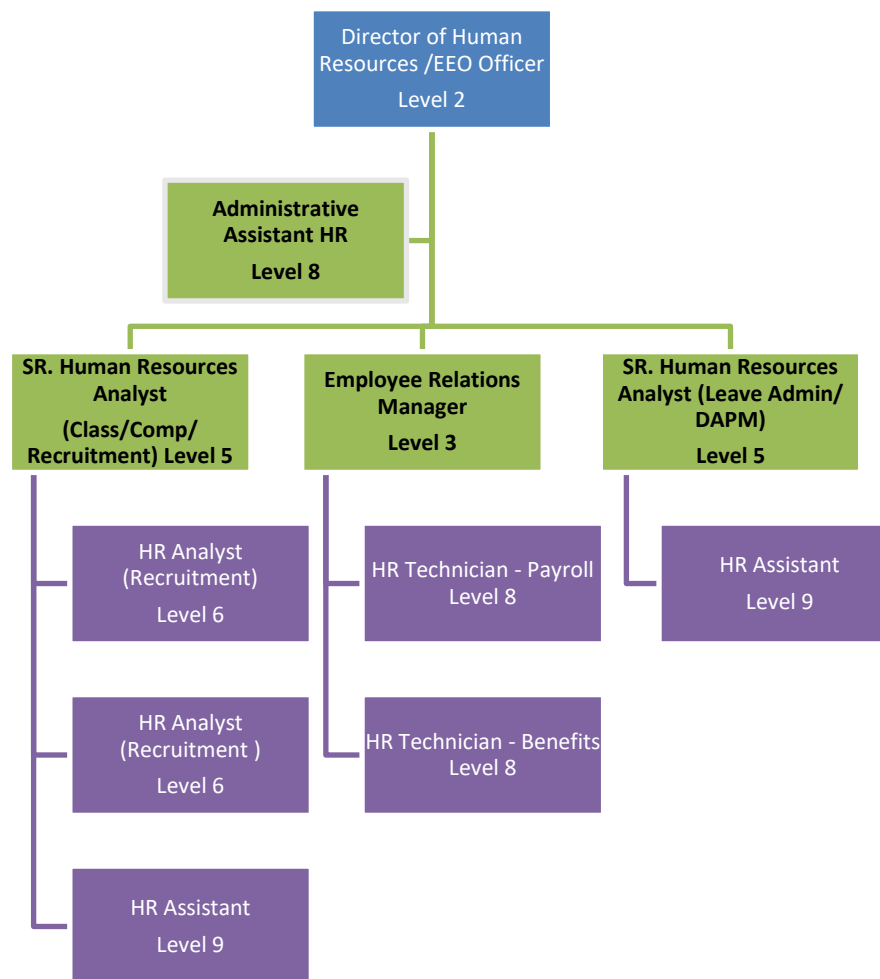
Performance merit increases for employees who reach the maximum of their pay range will be treated as follows:

- The employee's base pay will be brought to the maximum of their pay range;
- Any amount in excess pay, over the maximum pay range, will not be included in the employee's base pay;
- The excess amount of the merit award will be paid in a one-time lump sum.

The CEO/GM has the authority for a special merit award up to 3% of an employee's salary for work outside routine responsibilities.

## OMNITRANS HUMAN RESOURCES ORGANIZATIONAL CHART

July 2019



ITEM # E8

**DATE:** July 10, 2019

**TO:** Board Chair David Avila and Members of the Omnitrans Board of Directors

**THROUGH:** P. Scott Graham, CEO/General Manager

**FROM:** Eugenia F. Pinheiro, Contracts Manager

**SUBJECT: AUTHORIZE AWARD (BENCH) – CONTRACTS MNT19-42 (A-C)  
PAINT AND BODY SHOP SUPPLIES**

### **FORM MOTION**

Authorize the CEO/General Manager to award Contracts MNT19-42 (A-C) as listed below for the provision of Paint and Body Shop Supplies for a two (2) year base period beginning July 19, 2019 and ending July 18, 2021, with the authority to exercise three (3) single option years tied to the Consumer Price Index (CPI), extending the contracts to no later than July 18, 2024, in an aggregate not-to exceed amount of \$145,000, should all options be exercised.

List of Contracts for authorization:

Contract Number	Contractor*
MNT19-42A	Finishmaster, Inc of Indianapolis, IN
MNT19-42B	Smitty's Auto Paints of Hemet, Inc. of Hemet, CA
MNT19-42C	Sunbelt Sports Paint, Inc. of Santa Fe Springs, CA

\*Contractors are listed in alphabetical order.

### **BACKGROUND**

Omnitrans owns, operates, and maintains New Flyer buses for its revenue fleet service. Paint and Body Shop Supplies delivered under this bench of contracts will be used for painting and paint touch-up related repairs.

Solicitations under \$150,000 are informal procurements and do not require Board approval for release. In accordance with Procurement Policy 2000, Section 2.3.4.2., awards over \$50,000 require Board approval.

On February 6, 2019, staff released Request for Quotes RFQ-MNT19-42. The solicitation was posted on Omnitrans' online bidding system. Three (3) bids were received by the April 25, 2019 deadline and all were deemed responsive.

Option year pricing will be adjusted using the change (increase or decrease) in accordance with the CPI. Award is being made to the lowest, responsive and responsible bidder for each item. When inventory is not available from the lowest bidder, Omnitrans reserves the right to order from the next lowest bidder, on an as needed basis, no guarantee of usage. Pricing is deemed fair and reasonable based on competition.

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

### **FUNDING SOURCE**

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

Department	1200
Expenditure Code	504010

\_\_\_\_\_ Verification of Funding Sources and Availability of Funds  
(Verified and initialed by Finance)

Short Range Transit Plan/Strategic Initiative Supported – This procurement supports Omnitrans' Short Range Transit Plan FY2015–2020 goal to expand, maintain and improve existing vehicles, facilities and passenger amenities.

### **CONCLUSION**

By proceeding with the bench award, Omnitrans will have the ability to repair and maintain its fleet of buses.

PSG:EPF:AJ

ITEM #       F1      

**DATE:** July 10, 2019

**TO:** Board Chair David Avila and Members of the Omnitrans Board of Directors

**FROM:** P. Scott Graham, CEO/General Manager

**SUBJECT: CEO/GENERAL MANAGER'S REPORT**

**Federal Transit Administration (FTA) Section 5339 Bus and Bus Facilities Grant Program-** Omnitrans submitted a grant application under the FTA Section 5339 Bus and Bus Facilities Grant Program. The 5339 program is a competitive grant program to replace, rehabilitate and purchase buses and bus related equipment or bus-related facilities. Omnitrans submitted a grant application for funds to rehabilitate and upgrade the I St. paratransit facility.

20 June – Maintenance and Strategic Planning staff participated in a Skype meeting with consultant WSP to discuss the **SBCTA's Zero Emissions Bus Study**. The study and analysis are in response to the Zero Emission Bus Regulation, which mandates the full conversion of bus fleets to zero-emission by 2040. The goal of this study is to analyze the economics and financials of a full fleet conversion with consideration of all Transit Operators within San Bernardino County.

21 June – Omnitrans staff provided **Assemblymember Gomez Reyes**, her husband Frank Reyes, and Field Representative, Daniel Peeden a tour of Omnitrans services in the District. Staff presented materials regarding fixed route bus service, Access service, and the CTSA programs and services provided by Omnitrans. The tour included the Fontana Transit Center, the San Bernardino Transit Center and various senior housing locations within the District.

**Omnitrans/SBCTA Ad-Hoc Committee Update**

- 8 July - Omnitrans and SBCTA staff will meet to review service level and financial forecast.
- 5 September – Next scheduled Ad-Hoc Committee Meeting

PSG

ITEM #           F2          

**DATE:** July 10, 2019

**TO:** Board Chair David Avila and Members of the Omnitrans Board of Directors

**FROM:** P. Scott Graham, CEO/General Manager

**SUBJECT: UPDATE ON AB 1457 OMNITRANS TRANSIT DISTRICT  
LEGISLATION**

**FORM MOTION**

Receive and file update on Omnitrans Transit District Legislation.

**BACKGROUND**

On February 3, 2017 at a regular meeting of the Omnitrans Executive Committee, the Committee conducted a review of the Omnitrans governance structure and risk mitigation options related to Omnitrans role as manager of the contract that will provide for the operations and maintenance of the Redlands Passenger Rail Service (Arrow). Following this review, the Executive Committee determined that changing the structure of Omnitrans from a Joint Powers Authority (JPA) to a statutorily created entity would be the most effective means of eliminating the risk of potential tort liability to member entities of the Omnitrans JPA and directed staff to bring this issue forward to the full Board of Directors for consideration.

On March 1, 2017 the Omnitrans Board of Directors considered the recommendation of the Executive Committee and unanimously approved moving forward to pursue a bill author. Assembly Member Marc Steinorth later agreed to sponsor the bill (AB 548). This issue was further discussed at the April 5, 2017 Board of Directors meeting. Due to concerns raised by the San Bernardino County Transportation Authority (SBCTA) regarding taxing authority, the Board took action to suspend the process until the issues were resolved and there was consensus and clear direction moving forward.

Review of draft special legislation to change Omnitrans from a JPA to a statutorily created special transit district was again brought before the Board of Directors on June 6, 2018. At that time, it was requested that this item be brought back to the Board in the Fall for final approval. It was also noted that an added benefit of the bill would be to protect member agencies from potential CalPERS retirement liabilities of Omnitrans. The proposed legislation was subsequently brought before the Board on October 3, 2018 for approval; the motion was passed unanimously.



The Board directed staff to work with Legal Counsel and the Legislative Analyst to identify a bill author and to work with SBCTA staff to develop a Memorandum of Understanding (MOU) to address the concerns related to taxing authority. An MOU was successfully negotiated with SBCTA, and was executed by the parties.

## **ANALYSIS**

In February 2019, Assembly Member Reyes introduced Assembly Bill (AB) 1457, an act to add Part 19 (commencing with Section 108000) to Division 10 of the Public Utilities Code, relating to transportation, to create the Omnitrans Transit District. AB 1457, as published by the State Legislative Counsel, is attached to this agenda report. (Attachment A)

An update was provided to the Omnitrans Executive Committee on April 5, 2019. The Committee authorized the CEO/General Manager to work with General Counsel and Legislative Advocate to review and negotiate requested amendments to the legislation.

AB 1457 was considered by the State Local Government Committee on April 10, 2019. Omnitrans' Legislative Advocate received requested amendments to the legislation from the Committee Chair's representative. The requested amendments related to items such as Board member stipends, Public contracting Code for competitive bidding, and changes requested by the California Local Agency Formation Commission (CALAFCO). The requested amendments have been addressed.

The bill continued to successfully move through the State legislative committees; the Assembly Transportation Committee on May 30, 2019 and the Senate Transportation Committee on June 25, 2019.

Assembly Member Reyes office notified Omnitrans Legislative Analyst that concerns were raised regarding the bill by individual Omnitrans Board members as well as Senator Connie Leyva's office. In response to these concerns, on June 28, 2019 Assembly Member Reyes held a phone conference with representatives from Omnitrans, SBCTA, and the City of Ontario. Due to the issues raised, the Assembly Member decided to park the bill in policy committee. She reiterated her understanding of the necessity of the bill and requested that Omnitrans provide an update by October regarding the status of the concerns that have been raised.

## **CONCLUSION**

Receive and file update on Omnitrans Transit District.

PSG

Attachment A: Assembly Bill No. 1457

AMENDED IN ASSEMBLY MAY 24, 2019

AMENDED IN ASSEMBLY APRIL 11, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

## ASSEMBLY BILL

**No. 1457**

**Introduced by Assembly Member Reyes**

February 22, 2019

*An act to amend Section 22050 of, and to add Article 22 (commencing with Section 20360) to Chapter 1 of Part 3 of Division 2 of, the Public Contract Code, and to add Part 19 (commencing with Section 108000) to Division 10 of the Public Utilities Code, relating to transportation.*

### LEGISLATIVE COUNSEL'S DIGEST

AB 1457, as amended, Reyes. Omnitrans Transit District.

Existing law creates various transit districts throughout the state, with specified powers and duties relative to providing public transit services.

This bill would create the Omnitrans Transit District in the County of San Bernardino. The bill would provide that the jurisdiction of the district would initially include the Cities of Chino, Chino Hills, Colton, Fontana, Grand Terrace, Highland, Loma Linda, Montclair, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Upland, and Yucaipa, and specified portions of the unincorporated areas of the County of San Bernardino. The bill would authorize other cities in the County of San Bernardino to subsequently join the district. The bill would require the district to succeed to the rights and obligations of the existing Omnitrans Joint Powers Authority and would dissolve that authority. The bill would require the transfer of assets from the authority to the district. The bill would provide for a governing board composed of representatives of governing bodies within the county and would

specify voting procedures for the taking of certain actions by the board. The bill would specify the powers and duties of the board and the district to operate transit services, and would authorize the district to seek voter approval of retail transactions and use tax measures and to issue revenue bonds. The bill would enact other related provisions. By imposing requirements on the district and affected local agencies, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Article 22 (commencing with Section 20360) is*  
2     *added to Chapter 1 of Part 3 of Division 2 of the Public Contract*  
3     *Code, to read:*

4  
5                     *Article 22. Omnitrans Transit District*  
6

7     20360. *The provisions of this article shall apply to contracts*  
8     *by the Omnitrans Transit District, as provided for in Part 19*  
9     *(commencing with Section 108000) of Division 10 of the Public*  
10    *Utilities Code.*

11    20361. *Contracts for the construction of transit works or transit*  
12    *facilities in excess of ten thousand dollars (\$10,000) shall be*  
13    *awarded to the lowest responsible bidder after competitive bidding,*  
14    *except in an emergency declared by the vote of 15 members of the*  
15    *board of directors of the district. In the case of an emergency, if*  
16    *notice for bids to let contracts will not be given, the board of*  
17    *directors shall comply with Chapter 2.5 (commencing with Section*  
18    *22050).*

19    *SEC. 2. Section 22050 of the Public Contract Code is amended*  
20    *to read:*

21    22050. (a) (1) *In the case of an emergency, a public agency,*  
22    *pursuant to a four-fifths vote of its governing body, may repair or*  
23    *replace a public facility, take any directly related and immediate*

1 action required by that emergency, and procure the necessary  
2 equipment, services, and supplies for those purposes, without  
3 giving notice for bids to let contracts.

4 (2) Before a governing body takes any action pursuant to  
5 paragraph (1), it shall make a finding, based on substantial evidence  
6 set forth in the minutes of its meeting, that the emergency will not  
7 permit a delay resulting from a competitive solicitation for bids,  
8 and that the action is necessary to respond to the emergency.

9 (b) (1) The governing body, by a four-fifths vote, may delegate,  
10 by resolution or ordinance, to the appropriate county administrative  
11 officer, city manager, chief engineer, or other nonelected agency  
12 officer, the authority to order any action pursuant to paragraph (1)  
13 of subdivision (a).

14 (2) If the public agency has no county administrative officer,  
15 city manager, chief engineer, or other nonelected agency officer,  
16 the governing body, by a four-fifths vote, may delegate to an  
17 elected officer the authority to order any action specified in  
18 paragraph (1) of subdivision (a).

19 (3) If a person with authority delegated pursuant to paragraph  
20 (1) or (2) orders any action specified in paragraph (1) of subdivision  
21 (a), that person shall report to the governing body, at its next  
22 meeting required pursuant to this section, the reasons justifying  
23 why the emergency will not permit a delay resulting from a  
24 competitive solicitation for bids and why the action is necessary  
25 to respond to the emergency.

26 (c) (1) If the governing body orders any action specified in  
27 subdivision (a), the governing body shall review the emergency  
28 action at its next regularly scheduled meeting and, except as  
29 specified below, at every regularly scheduled meeting thereafter  
30 until the action is terminated, to determine, by a four-fifths vote,  
31 that there is a need to continue the action. If the governing body  
32 meets weekly, it may review the emergency action in accordance  
33 with this paragraph every 14 days.

34 (2) If a person with authority delegated pursuant to subdivision  
35 (b) orders any action specified in paragraph (1) of subdivision (a),  
36 the governing body shall initially review the emergency action not  
37 later than seven days after the action, or at its next regularly  
38 scheduled meeting if that meeting will occur not later than 14 days  
39 after the action, and at least at every regularly scheduled meeting  
40 thereafter until the action is terminated, to determine, by a

1 four-fifths vote, that there is a need to continue the action, unless  
2 a person with authority delegated pursuant to subdivision (b) has  
3 terminated that action ~~prior to~~ *before* the governing body reviewing  
4 the emergency action and making a determination pursuant to this  
5 subdivision. If the governing body meets weekly, it may, after the  
6 initial review, review the emergency action in accordance with  
7 this paragraph every 14 days.

8 (3) When the governing body reviews the emergency action  
9 pursuant to paragraph (1) or (2), it shall terminate the action at the  
10 earliest possible date that conditions warrant so that the remainder  
11 of the emergency action may be completed by giving notice for  
12 bids to let contracts.

13 (d) As used in this section, “public agency” has the same  
14 meaning as defined in Section 22002.

15 (e) A three-member governing body may take actions pursuant  
16 to subdivision (a), (b), or (c) by a two-thirds vote.

17 (f) This section applies only to emergency action taken pursuant  
18 to Sections 20134, 20168, 20205.1, 20213, 20223, 20233, 20253,  
19 20273, 20283, 20293, 20303, 20313, 20331, 20361, 20567, 20586,  
20 20604, 20635, 20645, 20682, 20682.5, 20736, 20751.1, 20806,  
21 20812, 20914, 20918, 20926, 20931, 20941, 20961, 20991,  
22 21020.2, 21024, 21031, 21043, 21061, 21072, 21081, 21091,  
23 21101, 21111, 21121, 21131, 21141, 21151, 21161, 21171, 21181,  
24 21191, 21196, 21203, 21212, 21221, 21231, 21241, 21251, 21261,  
25 21271, 21290, 21311, 21321, 21331, 21341, 21351, 21361, 21371,  
26 21381, 21391, 21401, 21411, 21421, 21431, 21441, 21451, 21461,  
27 21472, 21482, 21491, 21501, 21511, 21521, 21531, 21541, 21552,  
28 21567, 21572, 21581, 21591, 21601, 21618, 21624, 21631, 21641,  
29 and 22035.

30 ~~SECTION 1.~~

31 *SEC. 3.* Part 19 (commencing with Section 108000) is added  
32 to Division 10 of the Public Utilities Code, to read:

33  
34 **PART 19. OMNITRANS TRANSIT DISTRICT**

35  
36 **CHAPTER 1. GENERAL PROVISIONS**

37  
38 108000. This part shall be known and may be cited as the  
39 Omnitrans Transit District Act.

108001. It is the intent of the Legislature in enacting this part to provide for a unified, comprehensive institutional structure for the ownership and governance of a transit system within the County of San Bernardino to develop, provide, operate, and administer public transportation. It is further the intent of the Legislature that the district established by this act shall succeed to the powers, duties, obligations, liabilities, immunities, and exemptions of Omnitrans, a joint powers authority formed pursuant to the Joint Exercise of Powers Act (Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code), upon its dissolution.

108002. The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Part 1 (commencing with Section 56000) of Division 3 of Title 5 of the Government Code) shall not apply to the formation or dissolution of the district.

## CHAPTER 2. DEFINITIONS

108010. Unless the context otherwise requires, the provisions of this section govern the construction of this part.

(a) “Board of directors,” “board,” and “directors,” means the board of directors of the district.

(b) “Board of supervisors” means the Board of Supervisors of the County of San Bernardino.

(c) “City” means, individually, the Cities of Chino, Chino Hills, Colton, Fontana, Grand Terrace, Highland, Loma Linda, Montclair, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Upland, and Yucaipa, and any other city within the County of San Bernardino that joins as a member of the district as set forth in this part.

(d) “County” means, individually, the County of San Bernardino, and any other county which is annexed, in whole or in part, to the district as provided in this part.

(e) “District” means the Omnitrans Transit District.

(f) “Establish” includes establish, construct, complete, acquire, extend, or reroute. It does not, however, include the maintenance and operation of any existing system acquired by the district.

(g) “Indebtedness” means bonds, notes, or other evidences of indebtedness, and all other obligations, ~~instruments~~ *instruments*, and agreements which are issued or incurred by or on behalf of

1 the district pursuant to any other law to finance the lease,  
2 acquisition, construction, or improvement of a public improvement  
3 or working capital needs.

4 (h) “Omnitrans JPA” means the joint powers authority formed  
5 pursuant to the Joint Exercise of Powers Act (Chapter 5  
6 (commencing with Section 6500) of Division 7 of Title 1 of the  
7 Government Code) through that certain joint powers agreement  
8 titled “Amended and Restated Joint Powers Agreement between  
9 the County of San Bernardino and the Cities of Chino, Chino Hills,  
10 Colton, Fontana, Grand Terrace, Highland, Loma Linda, Montclair,  
11 Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino,  
12 Upland, and Yucaipa Creating a County Wide Transportation  
13 Authority to be Known as ‘Omnitrans,’” dated July 1, 2016.

14 (i) “Person” includes any individual, firm, partnership,  
15 association, corporation, limited liability company, trust, business  
16 trust, or the receiver or trustee or conservator for any of these, but  
17 does not include a public agency, as defined in subdivision (j).

18 (j) “Public agency” includes the State of California, and any  
19 county, city, district, or other political subdivision or public entity  
20 of, or organized under the laws of, this state, or any department,  
21 instrumentality, or agency thereof.

22 (k) “Revenues,” unless otherwise defined, means all rates, fares,  
23 tolls, rentals, fees, charges, or other income and revenue actually  
24 received or receivable by, or for the account of, the district from  
25 the operation of the system, including, but not limited to, interest  
26 allowed on any moneys or securities, any profits derived from the  
27 sale of any securities, any consideration in any way derived from  
28 any properties owned, operated, or at any time maintained by the  
29 district, and all local, state, or federal funds received by the district.

30 (l) “*SB LAFCO*” means the local agency formation commission  
31 for the County of San Bernardino.

32 ~~(t)~~

33 (m) “System” means all transit works and transit facilities owned  
34 or held, or to be owned or held, by the district for transit purposes.

35 ~~(m)~~

36 (n) “Transit” and “transit service” means the transportation of  
37 passengers and their incidental baggage by any means.

38 ~~(n)~~

39 (o) “Transit works” or “transit facilities” means any or all real  
40 and personal property, equipment, rights, facilities, title, or interests

owned, or to be acquired, by the district for transit service or purposes for the operation thereof.

(e)

(p) “Voter” means any elector who is registered under the Elections Code.

### CHAPTER 3. FORMATION OF DISTRICT

108030. (a) There is hereby created the Omnitrans Transit District, comprising the territory lying within the boundaries of the Cities of Chino, Chino Hills, Colton, Fontana, Grand Terrace, Highland, Loma Linda, Montclair, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Upland, and Yucaipa, and the territory described in subdivision (b), and other cities that subsequently qualify as members pursuant to the requirements set forth in Section 108032.

(b) (1) The unincorporated areas of the County of San Bernardino lying within the following census tracts are also part of the district:

6071000303, 6071000304, 6071000401, 6071000403, 6071000404, 6071000821, 6071002204, 6071002401, 6071002402, 6071002501, 6071002502, 6071002706, 6071003301, 6071003302, 6071003403, 6071003405, 6071003606, 6071004001, 6071004003, 6071004101, 6071004103, 6071004104, 6071004507, 6071006100, 6071006204, 6071006302, 6071006601, 6071007403, 6071007800, 6071008601, 6071008602, and 6071008706.

(2) The census tracts described in paragraph (1) are based on data from the 2014 American Community Survey (ACS) for the State of California on file with the Bureau of the Census, Department of Commerce, Washington, D.C.

108031. Through compliance with the provisions for annexation, the territory of all or part of any other contiguous city or county may be included within the district.

108032. Any city within the County of San Bernardino, other than a city specifically listed in Section 108030 that is already included in the district at its formation, may join as a member of the district upon approval by its city council of a resolution approving the city’s joining as a ~~member~~ and *member*; a resolution of the district’s board approving the joining of the new ~~member~~ *member*, and upon approval of SB LAFCO.



1 108033. (a) On and after January 1, 2020, Omnitrans JPA  
2 shall be dissolved and without the necessity of any further action,  
3 the district shall succeed to any or all obligations, liabilities,  
4 indebtedness, bonded and otherwise, immunities, and exemptions  
5 of Omnitrans JPA and its board of directors.

6 (b) Upon the dissolution of Omnitrans JPA and without the  
7 necessity of any further action, the district shall assume the rights  
8 and obligations of Omnitrans JPA under any contract to which  
9 Omnitrans JPA is a party and which is to be performed, in whole  
10 or in part, on or after the date of dissolution of Omnitrans JPA.

11 (c) Upon the dissolution of Omnitrans JPA and without the  
12 necessity of any further action, all real and personal property owned  
13 by Omnitrans JPA shall be transferred to the district.

14 (d) On and after the date of dissolution of Omnitrans JPA, any  
15 reference in any law or regulation to Omnitrans JPA shall be  
16 deemed to refer to the district.

17  
18 CHAPTER 4. GOVERNMENT OF DISTRICT  
19

20 108040. The district shall be governed by a board of directors.  
21 All powers, privileges, and duties vested in or imposed upon the  
22 district shall be exercised and performed by and through the board  
23 of directors, except that the exercise of all executive,  
24 administrative, and ministerial power may be delegated and  
25 redelegated by the board of directors to any of the offices, officers,  
26 or committees created pursuant to this chapter or created by the  
27 board of directors acting pursuant to this chapter.

28 108041. The board of directors shall consist of 19 members as  
29 follows:

30 (a) The board shall be composed of one primary representative  
31 selected by the governing body of each city that is a member of  
32 the district and four members of the board of supervisors to serve  
33 until recalled by the governing body of the city or county. Each  
34 director shall be a mayor, councilperson, or supervisor of the  
35 governing body that selected that person. Vacancies shall be filled  
36 in the same manner as originally selected.

37 (b) Each city and the county shall also select in the same manner  
38 as the primary or secondary representative, if applicable, one  
39 alternate to serve on the board when the primary representative is

1 not available. Whenever the alternate director serves on the board,  
2 the alternate director shall have all the powers of a regular director.

3 (c) The board may allow for the appointment of advisory  
4 representatives to sit with the board but in no event shall advisory  
5 representatives be allowed a vote.

6 (d) The board may increase the number of board members, or  
7 change the method of selection of board members, by resolution,  
8 to accommodate new member cities that join the district pursuant  
9 to Section 108032.

10 108042. The board, at its first meeting, and biennially thereafter  
11 at the first meeting in June, shall elect a chairperson who shall  
12 preside at all meetings, and a vice chairperson who shall preside  
13 in the absence of the chairperson. The chairperson and the vice  
14 chairperson shall serve two-year terms. Notwithstanding the  
15 foregoing, the vice chairperson shall become chairperson for the  
16 subsequent two-year term in the absence of a vote by the board of  
17 directors to the contrary. If the chairperson and vice chairperson  
18 are absent or unable to act, the members present, by an order  
19 entered in the minutes, shall select one of their members to act as  
20 chairperson pro tem, who, while so acting, shall have all the  
21 authority of the chairperson.

22 108043. The officers of the board shall consist of the members  
23 of the board of directors, the chairperson and vice chairperson of  
24 the board, a secretary, a general manager, a general counsel, and  
25 any other officers that the board deems necessary and provides for  
26 in its bylaws, or by ordinance or resolution.

27 108044. The board shall appoint and fix the salary of a general  
28 manager who shall have full charge of the acquisition, construction,  
29 maintenance, and operation of the facilities of the district, and of  
30 the administration of the business affairs of the district.

31 108045. (a) The board of directors shall do all of the following:

32 (1) Adopt bylaws for its procedures consistent with the laws of  
33 the state.

34 (2) Adopt an annual budget.

35 (3) Adopt a conflict-of-interest code.

36 (4) Adopt priorities reflecting the district's goals.

37 (5) Do any and all things necessary to carry out the purposes of  
38 this part.

39 (b) Each member of the board shall receive compensation, as  
40 determined by the board, in an amount not to exceed one hundred

1 twenty-five dollars (\$125) for attending each meeting of the board  
2 and each committee meeting, not to exceed a total of five hundred  
3 dollars (\$500) in any month, and shall receive their actual and  
4 necessary expenses incurred in the performance of their duties.

5 108046. A majority of the board or of a standing committee  
6 of the board entitled to vote constitutes a quorum for the transaction  
7 of business. All official acts of the board or a standing  
8 subcommittee of the board require the affirmative vote of a  
9 majority of the board or committee members present.

10 108047. The acts of the board shall be expressed by motion,  
11 resolution, or ordinance.

12 108048. All meetings of the board shall be conducted in the  
13 manner prescribed by the Ralph M. Brown Act (Chapter 9  
14 (commencing with Section 54950) of Part 1 of Division 2 of Title  
15 5 of the Government Code).

16  
17 CHAPTER 5. POWERS AND FUNCTIONS OF THE DISTRICT  
18

19 Article 1. Corporate and General Powers of the District  
20

21 108050. The district shall have the power to own, operate,  
22 manage, and maintain a public transit system and associated  
23 facilities, and, in the exercise of the power under this part, the  
24 district is authorized in its own name to exercise all rights and  
25 powers, expressed or implied, that are necessary to carry out the  
26 purposes and intent of this part, including, but not limited to, the  
27 power to do all of the following:

- 28 (a) Sue and be sued.
- 29 (b) Employ agents and employees, contract for services, and  
30 define the qualifications and duties for agents, employees, and  
31 contractors.
- 32 (c) Enter into and perform all necessary contracts.
- 33 (d) Adopt a seal and alter it at the district's pleasure.
- 34 (e) Enter joint powers arrangements with other entities.
- 35 (f) Appoint advisory, standing, or ad hoc committees as it deems  
36 necessary.
- 37 (g) Enact ordinances, resolutions, policies, and guidelines.
- 38 (h) Acquire, convey, construct, manage, maintain, and operate  
39 buildings and improvements, equipment, and assets of the district.

1 (i) Acquire, convey, and dispose of real and personal property,  
2 easements, and licenses.

3 (j) Adopt a conflict-of-interest code.

4 (k) Acquire by the exercise of the power of eminent domain or  
5 otherwise, or hold, lease, sublease, sell, or otherwise dispose of  
6 any real or personal property, tangible or intangible, equipment,  
7 and facilities.

8 (l) Create and administer funds and the distribution of those  
9 funds.

10 (m) Create and enact taxes, fees, fares, and penalties, as  
11 permitted by law.

12 (n) Advocate on behalf of the district.

13 (o) Develop and pursue ballot measures.

14 (p) Enforce criminally or civilly, as applicable, any and all  
15 ordinances, resolutions, and policies as permitted by law.

16 (q) Issue, incur, and encumber indebtedness. The debts,  
17 obligations, and liabilities incurred by the district shall not be, nor  
18 shall they be deemed to be, debts, encumbrances, obligations, or  
19 liabilities of any member.

20 (r) Invest money in the district treasury that is not needed for  
21 immediate necessities, as the board determines advisable, in the  
22 same manner and upon the same conditions as other local entities  
23 in accordance with Section 53601 of the Government Code.

24 (s) Pursue collection of obligations owed to the district.

25 (t) Exercise the right and power of eminent domain to take any  
26 property necessary or convenient to the exercise of the powers  
27 granted in this part.

28 (u) Subject to applicable law, provide transportation services  
29 or facilities outside the district's jurisdictional boundaries if a  
30 finding is made by the board that those services or facilities benefit  
31 the citizens or users of the transportation service or facilities.

32 (v) Do and undertake any and all other acts reasonable and  
33 necessary to carry out the purposes of this part.

34 108051. All claims for money or damages against the district  
35 are governed by Division 3.6 (commencing with Section 810) of  
36 Title 1 of the Government Code, except as provided herein or by  
37 other statutes or regulations expressly applicable thereto.

38 108052. The purchase of all services, supplies, equipment, and  
39 materials, and the construction of facilities and works, by the  
40 district, shall be done in the same manner and procedure, and

1 subject to the same limitations, that apply to the County of San  
2 Bernardino pursuant to current state law, or as may be subsequently  
3 amended.

4  
5 Article 2. Contracts  
6

7 108060. The district may make contracts and enter into  
8 stipulations of any nature whatsoever, employ labor, and do all  
9 acts necessary and convenient for the full exercise of the powers  
10 granted in this part.

11 108061. The district may contract with any department or  
12 agency of the federal government, with any public agency, or with  
13 any person upon terms and conditions as determined to be in the  
14 best interest of the district.

15 108062. The Legislature finds and declares that there is a  
16 compelling interest in ensuring that all federal, state, local, and  
17 private funds available to the district are captured and used in a  
18 timely manner. In order to maximize the use of federal, state, local,  
19 and private funds and to maintain a competitive posture in seeking  
20 supplemental federal funds, the district shall have the authority to  
21 establish and use a flexible contracting process to maximize  
22 efficient use of public funds.

23 108063. The district may insure against any accident or  
24 destruction of the system or any part of the system. The district  
25 may insure against loss of revenues from any cause whatsoever.  
26 It may provide, in the proceedings authorizing the issuance of any  
27 bonds, for the carrying of insurance in such amount and of such  
28 character as may be specified, and for the payment of the premiums  
29 thereon. The district may also provide insurance as provided in  
30 Part 6 (commencing with Section 989) of Division 3.6 of Title 1  
31 of the Government Code.

32  
33 Article 3. Transit Facilities and Services  
34

35 108070. The district may provide transit ~~service~~ *services* for  
36 the transportation of passengers and their incidental baggage by  
37 any means, including, but not limited to, through the operation of  
38 buses, specialized transit vehicles, and passenger rail service.

39 108071. The district may lease or contract for the use of its  
40 transit facilities, or any portion of its transit facilities, to any

1 operator, and may provide for subleases by the operator upon any  
2 terms and conditions it deems in the public interest. As used in  
3 this section, “operator” means any public agency or person.

4 108072. Subject to any applicable obligation to meet and confer  
5 with public employee organizations, the district may contract with  
6 any public agency or person to provide transit facilities and services  
7 for the district.

8 108073. (a) The district may construct and operate or acquire  
9 and operate transit works and facilities in, under, upon, over,  
10 across, or along any state or public street or highway or any stream,  
11 bay, or watercourse, or over any of the lands that are the property  
12 of the state, to the same extent that those rights and privileges  
13 appertaining thereto are granted to municipalities within the state.

14 (b) Before constructing or acquiring transit works and facilities  
15 pursuant to subdivision (a), planning staff of the district shall meet  
16 and confer with planning staff of the San Bernardino County  
17 Transportation Authority regarding the proposed transit works or  
18 facilities to avoid duplication of efforts, to assess financial  
19 feasibility of ongoing operations and maintenance, and to maximize  
20 resources for transit planning and implementation.

21 108074. The district may enter into agreements for the joint  
22 use of any property and rights by the district and any public agency  
23 or public utility operating transit facilities, and may enter into  
24 agreements with any public agency or public utility operating any  
25 transit facilities, and wholly or partially within or without the  
26 district, for the joint use of any property of the district or of the  
27 public agency or public utility, or the establishment of through  
28 routes, joint fares, transfer of passengers, or pooling arrangements.

29  
30 Article 4. Taxation, Fees, and Indebtedness  
31

32 108080. (a) The district may levy a retail transactions and use  
33 tax ordinance applicable in the incorporated and unincorporated  
34 territory of the county located in the district in accordance with  
35 this article and Part 1.6 (commencing with Section 7251) of  
36 Division 2 of the Revenue and Taxation Code. The ordinance shall  
37 only become effective if adopted by a two-thirds vote of the board  
38 and subsequently approved by the electors voting on the measure  
39 at a special election called for the purpose by the board of  
40 supervisors or at any regular election.

1 (b) The tax ordinance shall take effect at the close of the polls  
2 on the day of election at which the proposition is adopted. The  
3 initial collection of the transactions and use tax shall take place in  
4 accordance with subdivision (e) below.

5 (c) If, at any time, the voters do not approve the imposition of  
6 the transactions and use tax, this chapter remains in full force and  
7 effect. The board may, at any time thereafter, submit the same, or  
8 a different, measure to the voters in accordance with this chapter.

9 (d) The board, in ordinance shall state the nature of the tax to  
10 be imposed, the tax rate or the maximum tax rate, the purposes for  
11 which the revenue derived from the tax will be used, and may set  
12 a term during which the tax will be imposed. Tax revenues shall  
13 be used only for public transit purposes of the district, including  
14 administration of this part and legal actions related thereto. The  
15 ordinance shall contain an expenditure plan that shall include an  
16 allocation of revenues.

17 (e) Any transactions and use tax ordinance adopted pursuant to  
18 this article shall be operative on the first day of the first calendar  
19 quarter commencing more than 150 days after adoption of the  
20 ordinance.

21 (f) Before the operative date of the ordinance, the district shall  
22 contract with the California Department of Tax and Fee  
23 Administration to perform all functions incidental to the  
24 administration and operation of the ordinance. The costs to be  
25 covered by the contract may also include services of the types  
26 described in Section 7272 of the Revenue and Taxation Code for  
27 preparatory work up to the operative date of the ordinance. Disputes  
28 as to the amount of the costs shall be resolved in the same manner  
29 as provided in that section.

30 (g) The district, subject to the approval of the voters, may  
31 impose a maximum tax rate of one-half of 1 percent under this  
32 article and Part 1.6 (commencing with Section 7251) of Division  
33 2 of the Revenue and Taxation Code. The district shall not levy  
34 the tax at a rate other than one-half or one-fourth of 1 percent  
35 unless specifically authorized by the Legislature.

36 (h) Before adopting an ordinance pursuant to this section, the  
37 district shall obtain the approval by resolution of the board of the  
38 San Bernardino County Transportation Authority of the proposed  
39 tax.

1 (i) (1) The district may annually review and propose  
2 amendments to the expenditure plan contained in a transaction and  
3 use tax ordinance adopted pursuant to this article to provide for  
4 the use of additional federal, state, and local funds, to account for  
5 unexpected revenues, or to take into consideration unforeseen  
6 circumstances.

7 (2) The district shall notify the board of supervisors and the city  
8 council of each city in the district and provide them with a copy  
9 of the proposed amendments.

10 (3) The proposed amendments shall become effective 45 days  
11 after notice is given.

12 (j) As used in this section, “public transit purposes” includes  
13 the public transit responsibilities under the jurisdiction of the  
14 district as well as any repair, redesign, or ongoing maintenance of  
15 a district facility, any right-of-way upon which transit is intended  
16 to travel, or any bikeway, bicycle path, sidewalk, trail, pedestrian  
17 access, or pedestrian accessway, and all costs and expenses related  
18 thereto.

19 108081. The district may impose and administer fees and  
20 administer other funding sources secured for transportation system  
21 operation, maintenance, and improvement.

22 108082. The board may set fares for public transit service by  
23 resolution.

24 108083. As an alternative procedure for the raising of funds,  
25 the district may issue bonds, payable from revenues of any facility  
26 or enterprise to be acquired or constructed by the district, in the  
27 manner provided by the Revenue Bond Law of 1941 (Chapter 6  
28 (commencing with Section 54300) of Part 1 of Division 2 of Title  
29 5 of the Government Code), all of the provisions of which apply  
30 to the district.

31 108084. (a) (1) The district is a local agency within the  
32 meaning of the Revenue Bond Law of 1941 (Chapter 6  
33 (commencing with Section 54300) of Part 1 of Division 2 of Title  
34 5 of the Government Code).

35 (2) The term “enterprise” as used in the Revenue Bond Law of  
36 1941 shall, for all purposes of this part, include transit facilities  
37 and any and all parts of transit facilities, and all additions,  
38 extensions, and improvements thereto, and all other facilities  
39 authorized to be acquired, constructed, or completed by the district.



(3) The district may issue revenue bonds under the Revenue Bond Law of 1941, for any one or more facilities or enterprises authorized to be acquired, constructed, or completed by the district, or, as an alternative, may issue revenue bonds under the Revenue Bond Law of 1941, for the acquisition, construction, and completion of any one of those facilities.

(b) This part shall not prevent the district from availing itself of, or making use of, any procedure provided in this part for the issuance of indebtedness of any type or character for any of the facilities or works authorized under this part, and all proceedings may be carried out simultaneously or, as an alternative, as the directors may determine.

108085. The district may advocate on and act on behalf of all members with their concurrence to further the district's transit interests, funding, projects, and priorities.

108086. The district may adopt a plan for funding transit projects or operations located within its jurisdiction or outside of its jurisdiction as authorized by subdivision (u) of Section 108050, or both.

#### CHAPTER 6. RIGHTS OF EMPLOYEES

108090. When the district acquires existing facilities, rights, and obligations of Omnitrans JPA, all of the employees of Omnitrans JPA shall be appointed to comparable positions by the district. These employees shall be given sick leave, seniority, vacation credits, and all other rights and obligations that they have with Omnitrans JPA, upon the transfer of Omnitrans JPA to the district.

108091. The district shall provide for district employee retirement benefits under the program administered by the Public Employees' Retirement System or other system permitted by law.

#### CHAPTER 7. LIABILITY OF MEMBERS

108100. The members, whether individually or collectively, shall not be liable for any act or omission of the district, including, but not limited to, any of the following:

(a) Performing any and all things necessary to carry out the purposes of this part.

1 (b) Any act of the district or for any act of the district's agents  
2 or employees.

3 (c) The payment of wages, benefits, or other compensation to  
4 officers, agents, or employees of the district.

5 (d) The payment of workers' compensation or indemnity to  
6 agents or employees of the district for injury, illness, or death.

7  
8 CHAPTER 8. DETACHMENTS  
9

10 108200. (a) Territory within the district may be detached from  
11 the district by a supermajority vote of the directors, which shall  
12 be at least 80 percent of the nonweighted vote of the existing board,  
13 if all pending legal and financial obligations have been ~~satisfied~~.  
14 *satisfied, and upon approval of SB LAFCO.*

15 (b) The detachment of territory from the district shall become  
16 effective upon giving of the notice required in Section 57204 of  
17 the Government Code, except that the detached territory shall not  
18 be relieved from liability for taxation for the payment of any  
19 bonded indebtedness existing at the time of detachment and  
20 provided that all other pending legal and financial obligations have  
21 been resolved by mutual agreement.

22 (c) Notice of the detachment of territory from the district shall  
23 be given to each assessor whose roll is used for a tax levy made  
24 pursuant to this part and with the State Board of Equalization  
25 pursuant to Chapter 8 (commencing with Section 54900) of Part  
26 1 of Division 2 of Title 5 of the Government Code.

27  
28 CHAPTER 9. ANNEXATION  
29

30 108300. (a) Any territory annexed into a member city shall  
31 ~~automatically be annexed into the district.~~ *district upon approval*  
32 *of SB LAFCO.* For annexation of territory in the unincorporated  
33 county into the district, the annexation shall require approval of  
34 ~~the board.~~ *board and of SB LAFCO.*

35 (b) A city located within the County of San Bernardino that is  
36 not a member of the district may join the district pursuant to  
37 Section 108032.

## CHAPTER 10. DISSOLUTION

108400. (a) The district may be dissolved upon a supermajority vote of the directors, which shall be at least 80 percent of the nonweighted vote of the ~~board~~, *board, and approval of SB LAFCO*. However, the winding up of the district shall be conducted by the board and the general manager. The district shall not be fully dissolved and terminated until all debts, financial obligations, and liabilities are paid in full and any and all remaining assets after payment of all debts, financial obligations, and liabilities are distributed to the members.

(b) Distribution of assets to each member shall be made in the same proportion as that reflected in the accumulated capital contribution accounts from the records of the Omnitrans JPA, as shown and maintained by the district's finance director in the district's books of accounts. Cash may be distributed in lieu of property or equipment.

(c) (1) If the directors cannot agree as to the valuation of the property or to the manner of asset distribution, the question shall be submitted to arbitration, as set forth in this subdivision and the directors shall make the distribution or valuation as directed by arbitrators.

(2) Three arbitrators shall be appointed.

(3) The arbitration shall be binding and shall be conducted pursuant to Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure. Any hearings shall be held within the county. All notices, including notices under Section 1290.4 of the Code of Civil Procedure, shall be given to the governing body of each member.

108401. The board shall wind up the affairs of the district.

~~SEC. 2.~~

*SEC. 4.* No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.

O

ITEM # \_\_\_\_\_ F3

**DATE:** July 10, 2019

**TO:** Board Chair David Avila and Members of the Omnitrans Board of Directors

**THROUGH:** P. Scott Graham, CEO/General Manager

**FROM:** Eugenia F. Pinheiro, Contracts Manager

**SUBJECT: PROPOSED REVISIONS TO DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM FOR FEDERAL TRANSIT ADMINISTRATION (FTA) ASSISTED CONTRACTS**

### **FORM MOTION**

Review and approve revisions to the Disadvantaged Business Enterprise (DBE) Program in accordance with the U.S. Department of Transportation (DOT), Title 49, Code of Federal Regulations (CFR), Part 26 *Participation by Disadvantaged Business Enterprise (DBE) in Department of Transportation Financial Assistance Programs*.

### **BACKGROUND**

The Disadvantaged Business Enterprise (DBE) Program is a comprehensive program, developed by the U.S. Department of Transportation (DOT), which establishes guidelines for the participation of socially and economically disadvantaged firms in DOT/FTA-assisted contracting. As a condition of receiving federal grants, Omnitrans is required to maintain a DBE Program. The Program was last approved by the Board of Directors on October 3, 2012.

Omnitrans utilized the assistance of a DBE Consultant to review and revise the existing DBE Program. The revised draft DBE Program outlines how Omnitrans intends to comply with the DOT's DBE regulatory requirements. The proposed revisions identify the DBE Liaison Officer, adds several recommended monitoring and enforcement mechanisms to ensure prime contractors are complying with prompt payment and release of retainage requirements, and updates DBE and small business outreach efforts.

In response to race-neutral policy directives issued by the DOT, Omnitrans utilizes a strictly race-neutral program. The application of race-neutral program is in direct response to the Ninth Circuit U.S. Court of Appeals decision in *Western States Paving Co. v United States & Washington State Department of Transportation*, whereby the FTA issued a Notice (Guidance) for Public Transportation Providers (Docket No. FTA-2006-24063).

**FUNDING SOURCE**

Approval of the DBE provisions has no budget impact.

**CONCLUSION**

Approval of Omnitrans' proposed DBE Program ensures compliance with Title 49 CFR Part 26.

PSG:EFP

Attachment A: Disadvantaged Business Enterprise (DBE) Program – July 2019



**DBE**

**DISADVANTAGED BUSINESS ENTERPRISE**

**PROGRAM PLAN JULY 2019**

## TABLE OF CONTENTS

I.	POLICY STATEMENT AND PROGRAM OBJECTIVES .....	4
A.	Policy Statement/Objectives (§26.3, §26.7, §26.21, §26.23).....	4
B.	Applicability (§26.3, §26.21) .....	6
C.	Definition of Terms (§26.5) .....	6
D.	Non-Discrimination Requirements (§26.7) .....	6
E.	Reporting to DOT (§26.11) .....	7
F.	Bidders List (§26.11).....	7
G.	Federal Financial Assistance Agreement Assurance (§26.13 {a}) .....	7
1.	Assurance (§26.13 {a}): .....	7
2.	Contract Assurance (§26.13 {b}) .....	8
II.	ADMINISTRATIVE REQUIREMENTS .....	8
A.	DBE Program Updates (§26.21) .....	8
B.	Policy Statement (§26.23).....	8
C.	DBE Liaison Officer (§26.25).....	8
D.	DBE Financial Institutions (§26.27) .....	9
E.	Prompt Payment Provisions (§26.29) .....	10
F.	DBE Directory (§26.31).....	10
G.	Overconcentration (§26.33).....	10
H.	Business Development Programs (§26.35) .....	11
I.	Monitoring Responsibilities (§26.37) .....	11
1.	Monitoring Payments to DBEs and Non-DBEs: .....	11
2.	Prompt Payment Dispute Resolution.....	12
3.	Prompt Payment Complaints .....	13
4.	Enforcement Actions for Noncompliance of Participants.....	13
J.	Fostering Small Business Participation (§26.39) .....	14
III.	DETERMINING, MEETING & COUNTING PARTICIPATION TOWARDS THE OVERALL DBE GOAL .....	14
A.	Use of Set-Asides or Quotas (§26.43) .....	14
B.	Methodology for Setting Overall DBE Goals (§26.45; §26.49).....	15
C.	Transit Vehicle Manufacturers (TVM) Certifications (§26.49) .....	15
D.	Race-Neutral Measures (§26.51) .....	15
E.	Good Faith Efforts Procedures (§26.53).....	16
F.	Counting DBE Participation and Commercially Useful Function (§26.55) .....	17
IV.	DBE CERTIFICATION STANDARDS.....	18
V.	CERTIFICATION PROCEDURES .....	18

VI.	REQUIRED CONTRACT PROVISIONS AND ENFORCEMENT .....	18
Exhibit A:	DBE Program Regulations, Title 49 CFR Part 26 .....	20
Exhibit B:	DBE Program Organizational Chart .....	21
Exhibit C:	DBE Financial Institutions.....	22
Exhibit D:	Form 103- Monthly DBE Subcontractors Paid Report Summary and Payment Verification .....	24
Exhibit E:	Uniform Report of DBE Awards or Commitments and Payments.....	28

DRAFT



## **I. POLICY STATEMENT AND PROGRAM OBJECTIVES**

### **A. Policy Statement/Objectives (§26.3, §26.7, §26.21, §26.23)**

OMNITRANS has established and adopted a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation, Title 49, Code of Federal Regulations (CFR), Part 26 “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.” OMNITRANS receives federal financial assistance from the Department of Transportation (DOT), and as a condition of receiving this assistance, OMNITRANS has signed an assurance that it will comply with Title 49 CFR Part 26. The DBE Program applies to all OMNITRANS DOT-assisted projects.

It is the policy of OMNITRANS to ensure that DBEs, as defined in Title 49 CFR Part 26, have an equal opportunity to compete for and participate in the performance of all OMNITRANS DOT-assisted contracts and subcontracts.

Pursuant to the intent of these Regulations, the OMNITRANS policy objectives are to:

1. Ensure non-discrimination in the award and administration of all OMNITRANS DOT-assisted contracts and subcontracts;
2. Create a level playing field by which DBEs can fairly compete for and perform in OMNITRANS DOT-assisted contracts;
3. Ensure that the OMNITRANS DBE Program is narrowly tailored in accordance with applicable law and current legal standards, including the Ninth Circuit Ruling in *Western States Paving vs. Washington State Department of Transportation*;
4. Ensure that only firms that fully meet Title 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove procurement and contracting barriers, which impede DBE participation in OMNITRANS DOT-assisted contracts;
6. Monitor and enforce contractor compliance in meeting established goal objectives and program requirements;
7. Assist in the development of DBEs and Small Businesses to increase their ability to compete successfully in the marketplace outside the DBE Program; and
8. Ensure OMNITRANS’ contractors and subcontractors take all necessary and reasonable steps to comply with these policy objectives.

As evidence of OMNITRANS commitment to pursue these policy objectives, the Board of Directors has designated P. Scott Graham, CEO/General Manager, as the DBE Liaison Officer (DBELO). In this capacity Mr. Graham is responsible for implementing all aspects of the DBE program.

Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by OMNITRANS in its financial assistance agreements with DOT. It is the expectation of the CEO/General Manager that all OMNITRANS personnel shall adhere to the full spirit and intent of the DBE program and carry out all DBE requirements accordingly.

OMNITRANS will disseminate this policy statement to each of the Agency’s departments. Additionally, OMNITRANS will distribute this policy to DBE and non-DBE business communities that perform or are interested in performing work on OMNITRANS projects.

Through such efforts, OMNITRANS will ensure DOT-assisted contracting and procurement related processes promote equity in access, consideration and opportunity for DBEs and other small businesses

in response to requirements set forth under Title 49 CFR Part 26; “Participation of Disadvantaged Business Enterprises in U.S. Department of Transportation Programs,” effective March 4, 1999, and subsequently issued DOT Directives and Final Rules.

P. Scott Graham, CEO/General Manager

\_\_\_\_\_  
*(Signature of Chief Executive Officer)*

\_\_\_\_\_  
Date

DRAFT

**B. Applicability (§26.3, §26.21)**

OMNITRANS, as a direct recipient of federal funds from the DOT, and as a condition of Federal financial assistance, is required to submit for approval to the DOT Operating Administration from which it receives the majority of its funding, a DBE Program developed in accordance with federal regulations published under Title 49 CFR Part 26 and subsequent guidance. This DBE Program sets forth the policies and procedures to be implemented by OMNITRANS to ensure that DBEs have an equitable opportunity to participate in OMNITRANS' DOT-assisted contracting opportunities.

In direct response to these regulatory requirements, OMNITRANS hereby establishes a DBE Program, which will:

1. Comply with federal regulations and financial assistance agreements;
2. Meet legal standards for narrow-tailoring requirements;
3. Ensure non-discrimination in the award of DOT-assisted contracts; and
4. Reaffirm the OMNITRANS commitment to fairness and the principles of equal opportunity.

In conformance with Title 49 CFR Part 26, OMNITRANS will continue to carry out its DBE Program until all DOT funds have been expended.

OMNITRANS additionally complies with the California Department of Transportation's (Caltrans') DBE Program on projects on which it is a sub-recipient of federal funds through Caltrans.

OMNITRANS will advise all applicable DOT Operating Administrations of any significant updates and/or changes to this DBE Program.

In the event of any conflicts or inconsistencies between the Regulations and the OMNITRANS DBE Program with respect to DOT-assisted contracts, the Regulations shall prevail.

**C. Definition of Terms (§26.5)**

All terms used in this DBE Program shall have the meaning set forth in Title 49 CFR Part 26, (See DBE Program Regulations, Title 49 CFR Part 26 in Exhibit A, § 26.5).

**D. Non-Discrimination Requirements (§26.7)**

OMNITRANS will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by Title 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, OMNITRANS will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

**E. Reporting to DOT (§26.11)**

OMNITRANS will submit to the applicable DOT Operating Administration the “Uniform Report of DBE Awards or Commitments and Payments” (See Exhibit E) semi-annually on June 1 and December 1 of each year, as required. The June 1 report will include DBE activity from October 1 through March 31. The December 1 report will include DBE activity from April 1 through September 30. This report presents a summary of U.S. DOT-assisted prime contracts and subcontracts awarded or committed to as well as actual payments for contracts completed and the associated dollar value during this reporting period.

Upon request, OMNITRANS will compile and submit ad-hoc DBE contract award and progress reports for U.S. DOT-assisted projects. Furthermore, OMNITRANS will continue to provide reports relative to the OMNITRANS DBE Program, as directed. These reports will provide DBE participation information on OMNITRANS race-neutral and gender-neutral contracts on all U.S. DOT-assisted procurement activities.

OMNITRANS has developed a detailed record keeping system as a mechanism for monitoring and tracking DBE commitments/attainments. The system includes procedures adopted by OMNITRANS to comply with DOT regulations and maintenance of support documentation including subcontractor commitments, contract documents for all subcontractors, and Monthly DBE Subcontractors Paid Report Summary and Payment Verification (Exhibit D) from prime contractors.

**F. Bidders List (§26.11 (c))**

Vendor registration is maintained through OMNITRANS’ online bidding system. Database registration enables a vendor to be notified of all solicitations within the specific commodity that the vendor has identified within their vendor profile.

**G. Federal Financial Assistance Agreement Assurance (§26.13 {a})**

OMNITRANS has signed the following assurances as a condition of financial assistance agreements with the DOT, and which is hereby made applicable to all OMNITRANS DOT-assisted contracts:

**1. Assurance (§26.13 {a}):**

This language will appear in financial assistance agreements with sub-recipients:

“OMNITRANS shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. DOT-assisted contract or in the administration of its DBE Program or the requirements of Title 49 CFR Part 26. OMNITRANS shall take all necessary and reasonable steps under Title 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts. OMNITRANS DBE Program, as required by Title 49 CFR Part 26 and as approved by U.S. DOT, is incorporated by reference in this agreement. Implementation of this Program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to OMNITRANS of its failure to carry out its approved program, the Department may impose sanctions as provided under Title 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).”

**2. Contract Assurance (§26.13 {b})**

OMNITRANS will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

“The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of Title 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the 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 the OMNITRANS deems appropriate.”

**II. ADMINISTRATIVE REQUIREMENTS****A. DBE Program Updates (§26.21)**

OMNITRANS has received a grant of \$250,000 or more in Federal Transit Administration (FTA) planning capital, and or operating assistance in a federal fiscal year, OMNITRANS shall continue to carry out this program until all funds from DOT financial assistance have been expended. OMNITRANS shall provide to DOT updates representing significant changes in the program.

**B. Policy Statement (§26.23)**

The Policy Statement is elaborated on the first page of this Program.

**C. DBE Liaison Officer (§26.25)**

OMNITRANS has designated the following individual as the Disadvantaged Business Enterprise Liaison Officer (DBELO):

Mr. P. Scott Graham  
CEO/General Manager  
OMNITRANS  
1700 West Fifth Street  
San Bernardino, CA 92411  
Telephone: (909) 379-7112  
Email: [scott.graham@omnitrans.org](mailto:scott.graham@omnitrans.org)

In this capacity, the DBELO or his designee is responsible for implementing all aspects of the DBE Program and ensuring that OMNITRANS complies with all provisions of Title 49 CFR Part 26 and subsequent DOT-issued directives and final rules. The DBELO has direct, independent access to OMNITRANS' Chief Executive Officer/General Manager concerning DBE Program matters (Refer to Exhibit B, “DBE Program Organizational Chart”). The DBELO has sufficient support personnel who devote a portion of their time to implement and administer the Program. The DBELO is responsible for developing, implementing and monitoring the DBE Program, in coordination with other appropriate officials.

The DBELO's and/or designee's duties include, but are not limited to, the following activities:

1. Gathers and reports statistical data and other information as required by the DBE Program, including preparation of semi-annual DBE reports (Exhibit E, Uniform Report of Awards &

Commitments) and overall Project DBE goals and related analysis for submission to the applicable DOT Operating Administration and management ad hoc reporting.

2. Reviews applicable contracts, purchase requisitions, advertisements, boilerplate language specifications and other related documentation specific to implementing applicable DBE requirements.
3. Consults with all affected departments in developing overall DBE goals and project goals.
4. Ensures that bid notices and requests for proposals are made available to DBEs in a timely manner.
5. Reviews DOT-assisted contracts and procurements for purposes of applying contract-specific DBE goals, when appropriate, and/or applicable race-neutral methods.
6. Analyzes OMNITRANS progress towards meeting overall DBE goal commitments by monitoring individual contract DBE attainments ("Monthly Subcontractor Paid Report"- Exhibit D).
7. Participates in pre-bid meetings for purposes of reviewing DBE solicitation and contract requirements with potential bidders and/or offerors.
8. Advises the CEO/General Manager and/or the OMNITRANS Board on DBE matters and achievements.
9. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
10. Determines contractor compliance with race-conscious DBE Good Faith Effort provisions, as applicable, in a race-conscious environment and conducts contract DBE responsiveness reviews, including assessing DBE participation eligibility towards the OMNITRANS overall DBE goal, as applicable, to both race-conscious and race-neutral methods.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.

Additionally, the DBELO and/or designee is charged with implementing the race-neutral measures defined in Section VI of this DBE Program document.

Designee:

Ms. Erin Rogers  
Deputy General Manager  
OMNITRANS  
1700 West Fifth Street  
San Bernardino, CA 92411  
Telephone: (909) 379-7121  
Email: [erin.rogers@omnitrans.org](mailto:erin.rogers@omnitrans.org)

#### **D. DBE Financial Institutions (§26.27)**

It is the policy of OMNITRANS to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to utilize these institutions, as available, and to encourage prime contractors on OMNITRANS DOT-assisted contracts to make use of these institutions.

To date the institutions listed in Exhibit C, have been identified as DBE Financial Institutions.

Information on the availability of such institutions can be obtained from the DBELO.

**E. Prompt Payment Provisions (§26.29)**

The DBE Program found at Title 49 CFR Part 26 requires that any delay or postponement of payment over 30 days may take place only for good cause and with OMNITRANS prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the California Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

OMNITRANS has, by a contract clause pursuant to Title 49 CFR Part 26, 26.29, "Prompt Payment Mechanisms for Recipients," adopted a prompt payment provision on all DOT-assisted contracts, to facilitate timely payment to all subcontractors. This provision, governing the payment to subcontractors (DBEs and non-DBEs), requires a prime contractor to issue payment to all subcontractors for satisfactory work performed, no later than seven (7) days from the prime contractor's receipt of payment from OMNITRANS. This provision shall also apply to the disbursement of retention proceeds withheld by the prime, requiring the prompt return of retainage payments from the prime contractor to the subcontractor within 30 days of subcontractor's satisfactory completion of the accepted work. These prompt payment provisions are required to be incorporated in all subcontract agreements issued by the prime contractor.

OMNITRANS requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years after contract expiration unless otherwise provided by applicable record retention requirements for the financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of OMNITRANS or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

OMNITRANS shall review contract payments to subcontractors including DBEs on a quarterly basis. Payment reviews will evaluate whether the actual amount paid to DBE subcontracts is equivalent to the amounts reported to OMNITRANS by the prime contractor.

**F. DBE Directory (§26.31)**

OMNITRANS refers interested parties to the California Unified Certification Program (CUCP) Database of Certified DBE Firms (DBE Directory) to assist in identifying certified DBEs. The DBE Directory is published at [http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm).

**G. Overconcentration (§26.33)**

OMNITRANS has not identified any types of work that have a burdensome overconcentration of DBE participation. However, should OMNITRANS determine that overconcentration exists in a work classification, OMNITRANS will obtain the approval of the concerned DOT Operating Administration of its determination and the measures devised to address it. Once these measures are approved, they will become part of the OMNITRANS DBE Program.



**H. Business Development Programs (§26.35)**

OMNITRANS has not established a business development program. The DBELO will continually evaluate the need and assess whether OMNITRANS should establish a Business Development Program and/or a Mentor Protégé Program. If OMNITRANS establishes either program, the program will be guided by the applicable Appendix of Title 49 CFR Part 26 and approved by the cognizant DOT Operating Administration before being implemented.

**I. Monitoring Responsibilities (§26.37)**

OMNITRANS implements and carries out appropriate mechanisms to ensure compliance with Title 49 CFR Part 26 requirements by all program participants, including prompt payment and describes and sets forth these mechanisms in OMNITRANS' DBE program.

**1. Monitoring Payments to DBEs and Non-DBEs:**

OMNITRANS undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the following method(s):

- Prior to issuance of progress payments, commencing with the second invoice, the prime contractor shall provide OMNITRANS with evidence that the prime contractor has paid all subcontractors all amounts due for work that the subcontractor has performed. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to OMNITRANS by the prime contractor.
- OMNITRANS may perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts committed.

OMNITRANS requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years following contract expiration unless otherwise provided by applicable record retention requirements for OMNITRANS' financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of OMNITRANS or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

OMNITRANS proactively reviews contract payments to subcontractors including DBEs prior to OMNITRANS' issuance of progress payments, commencing with the second invoice, the prime contractor shall provide OMNITRANS with evidence that the prime contractor has paid all subcontractors all amounts due for work that the subcontractor has performed. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to OMNITRANS by the prime contractor.



## **2. Prompt Payment Dispute Resolution (§26.29)**

OMNITRANS will take the following steps to resolve disputes as to whether work has been satisfactorily completed.

The obligations of prompt payment and release of retainage does not arise if there is a legitimate dispute over a subcontractor's performance. Subcontractor shall first attempt to work with the prime contractor regarding whether subcontractor's work has been satisfactorily performed. If a dispute remains as to whether work has been satisfactorily completed for purposes of prompt payment requirements, notice should be provided to the OMNITRANS' Contract Administrator to settle the relevant dispute with individuals authorized to bind each interested party.

Steps to resolve dispute shall include, conducting a meeting between prime contractor, subcontractor, and Omnitrans' to review whether subcontractor work was completed in accordance with contract, plans and specifications. OMNITRANS will review evidence from both sides and issue a determination.

OMNITRANS has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage:

1. Alternative dispute resolution (ADR) Contract Clause

A contract clause providing that the prime contractor will be required to engage in ADR for any prompt payment and return of retainage issues.

OMNITRANS shall include the following clause in each DOT-assisted contract:

"OMNITRANS and the prime contractor intend to resolve all disputes under this contract to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution (ADR) process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the ADR process will include, at a minimum, an attempt to resolve disputes through communications between parties. If a resolution is not reached at that level, a review shall be conducted on such disputes by appropriate management level officials within OMNITRANS and the Contractor's organization.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a court de novo and the court shall not be limited in such proceeding to the issue of whether OMNITRANS acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with OMNITRANS' direction or decisions made thereof."

## 2. Prompt Payment Contract Clause

This contract clause provides that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

“Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than seven (7) days after the contractor’s receipt of payment for that work from 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.”

## 3. Prompt Payment Complaints

Complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure.

- If affected subcontractor is not comfortable contacting prime contractor directly regarding payment or unable to resolve payment discrepancies with prime contractor, subcontractor may contact the Contract Administrator to initiate a complaint.
- If filing a prompt payment complaint with the Contract Administrator does not result in timely and meaningful action by OMNITRANS to resolve the prompt payment dispute, subcontractor should contact OMNITRANS’ DBELO to escalate the complaint.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by OMNITRANS to resolve prompt payment disputes, affected subcontractor may contact the Federal Transit Administration (FTA).

## **3. Enforcement Actions for Noncompliance of Participants (§26.37)**

OMNITRANS shall provide appropriate means to enforce the regulatory requirements as follows:

- Prior to OMNITRANS’ issuance of progress payments, commencing with the second invoice, the prime contractor shall provide OMNITRANS with evidence that the prime contractor has paid all subcontractors all amounts due for work that the subcontractor has performed.
- OMNITRANS may perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts committed.
- In accordance with the contract, assessing a daily fee against the prime contractor for each day beyond the required time period the prime contractor fails to pay the subcontractor.

OMNITRANS will bring to the attention of the DOT any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps provided in Title 49 Part 26.107 (e.g.,

referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules). Additionally, OMNITRANS will consider similar action under its own legal authorities, including responsibility determinations in future contracts.

**J. Fostering Small Business Participation (§26.39)**

OMNITRANS will structure contracting requirements to facilitate competition by small businesses by requiring prime contractors to specify elements of work that small businesses can perform and to provide subcontract opportunities for those elements to DBEs and other small businesses.

In addition, OMNITRANS commits to the following:

- Configuring large contracts into smaller contracts when feasible, which would make contracts more accessible to small business, and would not impose significant additional cost, delay or risk to OMNITRANS;
- Assisting in overcoming limitations in bonding and financing;
- Providing technical assistance in orienting small businesses to public contracting procedures, use of the Internet, and facilitating introductions to OMNITRANS and other U.S. DOT recipients' contracting activities;
- Providing outreach and communications programs on contract procedures and contract opportunities to ensure the inclusion of small businesses;
- Providing business development assistance.

### **III. DETERMINING, MEETING & COUNTING PARTICIPATION TOWARDS THE OVERALL DBE GOAL**

OMNITRANS is currently operating a strictly race-neutral DBE Program in accordance with DOT guidance following the Western States Paving decision of the 9th Circuit Court of Appeals. Should OMNITRANS incorporate a race-conscious DBE Program in the future, the breakout of estimated race-neutral and race-conscious participation to this program will be updated. This section of the program will be updated triennially when the goal calculation is updated.

As OMNITRANS is currently operating a strictly race-neutral DBE Program, contract goals are not applicable to OMNITRANS procurements. Should OMNITRANS, at a future date, incorporate a race-conscious component to its DBE Program, it may then use contract goals to meet any portion of the overall goal OMNITRANS does not project being able to meet using race-neutral means. OMNITRANS will ensure FTA approval prior to implementing any race-conscious program.

**A. Use of Set-Asides or Quotas (§26.43)**

OMNITRANS shall not permit the use of quotas for DBEs on DOT-assisted contracts in accordance with Title 49 CFR Part 26. Further, OMNITRANS shall not set aside contracts for DBEs on DOT-assisted contracts subject to the regulatory provisions, except in limited and extreme circumstances where no other method could be reasonably expected to redress egregious instances of discrimination.

**B. Methodology for Setting Overall DBE Goals (§26.45 (c) (d)(f); §26.49)**

OMNITRANS, on a triennial basis, will prepare and submit an overall program goal for FTA's approval. The overall program goal will represent the amount of DOT-assisted funds OMNITRANS anticipates expending on DBE firms over three years and will be presented as a percentage of the total DOT-assistance received.

The overall program goal will be developed in accordance with the 2-step process specified in §26.45 (c) & (d). The first step is to determine the goal "base figure" based on the relative availability of DBEs in the OMNITRANS market area. The second step is to adjust the goal "base figure" from Step 1 so that it reflects as accurately as possible the DBE participation OMNITRANS would expect in the absence of discrimination based on past participation, a disparity study and/or information about barriers to DBE participation. Annual projections on DBE participation during each fiscal year will be developed as specified by §26.45 (e)(3)(iii).

OMNITRANS will consult with minority, women's and general contractor groups, community organizations, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the OMNITRANS' efforts to establish a level playing field for the participation of DBEs.

OMNITRANS will publish a notice on the OMNITRANS website of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the OMNITRANS principal office.

OMNITRANS will submit the overall program goal to DOT in accordance with §26.45 (f)(2). The overall goal submission to DOT will include a summary of information and comments received during this public comment/participation process and any OMNITRANS responses.

OMNITRANS will commence the use of the approved triennial goal on October 1 of each year included in the triennial period, unless other instructions are received from DOT/FTA. If the goal is established on a project basis, the goal shall apply to the first solicitation for a DOT-assisted contract for the project.

**C. Transit Vehicle Manufacturers (TVM) Certifications (§26.49)**

OMNITRANS shall require transit vehicle manufacturers (TVM) to certify that they have fully complied with this section and that they have established an overall DBE participation goal that has been approved by the FTA before they can bid or propose on any OMNITRANS FTA-assisted vehicle procurement. Expenditures on DOT-assisted transit vehicle procurements are not included in the funding base used to calculate OMNITRANS' goal for DBE participation. Alternatively, OMNITRANS may, at its discretion and with DOT approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

**D. Race-Neutral Measures (§26.51)**

As OMNITRANS is currently operating a strictly race-neutral DBE Program, contract goals are not applicable to OMNITRANS procurements. OMNITRANS will implement the following race-neutral measures which are aimed at increasing DBE and other small business participation:

- Arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE and other small business participation.

OMNITRANS will also hold conferences, which include a networking component to promote teaming opportunities between prospective prime contractors and the DBE and Small Business contracting community.

- Configure large contracts into smaller contracts when feasible, which would make contracts more accessible to small business, and would not impose significant additional cost, delay or risk to OMNITRANS.
- Identify components of the work which represents subcontracting opportunities and identifying the availability of DBE subcontractors to participate in proportion to total available subcontractors. Contractors will be encouraged to consider subcontractors for components of the work for which there is a known supply of ready, willing, and able subcontractors, including DBE subcontractors, in preparing their bids.
- Provide technical assistance in orienting small businesses to public contracting procedures, use of the Internet, and facilitating introductions to OMNITRANS and other U.S. DOT recipients' contracting activities. OMNITRANS will also provide business development assistance and provide DBEs with information and assistance in preparing bids.
- Plan and participate in DBE training seminars.
- Provide assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing). OMNITRANS will refer the DBE and Small Business contracting community to the SBA Bonding Assistance Program.
- Solicit DBEs and other small businesses participation by carrying out information and communication programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists of bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate).
- Actively promote the Small Business conferences, programs, and support services offered by other agencies that have established DBE and Small Business Programs as a supportive service to help develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses.
- Attend and participate in small business and DBE vendor fairs.
- Advise its contracting community of the online directory of certified DBEs, found at the California Unified Certification Program website:  
[http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm).
- Advise the contracting community of the available small businesses certified by the California Department of General Services (DGS) and found at the following url:  
[www.bidsync.com/DPXBisCASB](http://www.bidsync.com/DPXBisCASB).

#### **E. Good Faith Efforts Procedures (§26.53)**

As OMNITRANS is currently operating a strictly race-neutral DBE Program, contract goals are not applicable to OMNITRANS procurements, therefore Good Faith Efforts procedures for contract goals are not applicable.

Should OMNITRANS implement a race-conscious component to this DBE Program, the DBE Program will be amended to provide the procedures for the administrative reconsideration process and to specify the OMNITRANS Reconsideration Official.

**F. Counting DBE Participation and Commercially Useful Function (\$26.55)**

OMNITRANS will count DBE participation toward overall goals as provided in Title 49 CFR, Part 26.55.

**1. Notification of Reporting Responsibilities**

The prime contractor shall be directed to the contract specification for OMNITRANS' specific DBE reporting and record keeping requirements.

**2. DBE Activity Reporting Forms**

All prime contractors shall submit monthly progress reports on DBE utilization to OMNITRANS on Form 103- Monthly DBE Subcontractors Paid Report Summary and Payment Verification (See Exhibit D). Failure to submit these reports in a timely manner may result in a penalty of \$10 per day, per report. The last Form 103 report shall be clearly marked "Final."

**3. Contractor Good Faith Efforts and Reporting Obligations**

During the term of the contract, the contractor shall continue to make good faith efforts to ensure that DBEs have an opportunity to successfully perform in the contract, and that the contractor meets its DBE goal.

The following guidelines apply in calculating DBE participation toward meeting established goals in accordance with Title 49 CFR, Part 26.55:

- Only work proposed to be performed by a DBE's own work forces (including cost of supplies, materials and equipment leases) obtained by the DBE for the work of the contract, except supplies and equipment the subcontractor purchases and/or leases from the prime contractor or its affiliate.
- When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE subcontractor is itself a certified DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce.
- In instances of joint venture, a Bidder/Proposer may only count toward its DBE goal the portion of the bid which meets certification, ownership and control standards.
- A Bidder/Proposer may count toward its DBE goal, only expenditures to firms that are proposed to perform a commercially useful function on that contract. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing and supervising the work involved.
- A Bidder/Proposer may count toward its DBE goal, sixty percent (60%) of its expenditures for materials and supplies required under the contract and obtained from a DBE regular dealer, and one hundred (100%) percent of such expenditures to a DBE manufacturer. For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment



that produces on the premises the materials and supplies obtained by the contractor. A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business.

- A Bidder/Proposer may count towards its DBE goal, fees and commissions paid to DBE firms that are not manufacturers or regular dealers, provided that the fees or commissions are determined to be reasonable and not excessive, as compared with fees customarily allowed for similar services.
- Special Provisions for Trucking – A Bidder/Proposer may count towards its goal, all transportation services provided by DBE trucking firms, who can demonstrate control of trucking operations for which it seeks credit and it owns, insures, and operates, using drivers it employs in the performance of the contract. The DBE must itself own and operate at least one fully licensed, insured, and operation truck used on the contract. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
- In cases where DBE certification has ceased during the performance period of the contract, although the prime contractor will continue to report the dollar value of the worked performed to OMNITRANS on the monthly DBE Paid Report (Form 103), OMNITRANS will not count the participation towards its overall goal.

#### **IV. DBE CERTIFICATION STANDARDS**

As a non-certifying member of the CUCP, OMNITRANS will accept DBE certifications from certifying member agencies of the CUCP (§26.61-§26.73; §26.81; §26.83a). The CUCP DBE Certification application is located at: [http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm).

For more information about the certification process or to apply for certification, firms should visit the California DOT Office of Business & Economic Opportunity website at <http://www.dot.ca.gov/obeo>.

#### **V. CERTIFICATION PROCEDURES**

OMNITRANS is a member of the CUCP administered by the State of California Certifying Members. The CUCP will meet all of the requirements of Title 49 CFR Part 26 (Subpart E).

#### **VI. REQUIRED CONTRACT PROVISIONS AND ENFORCEMENT**

##### **Information, Confidentiality, Cooperation (§26.109)**

OMNITRANS will safeguard from disclosure to third parties, information that may reasonably be regarded as confidential business information, consistent with Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), California Public Records Act (Government Code §6250) state, and local law.

Notwithstanding the preceding provision, OMNITRANS will not release any information that may reasonably be construed as confidential business information to any third party (other than DOT) without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information.

DRAFT

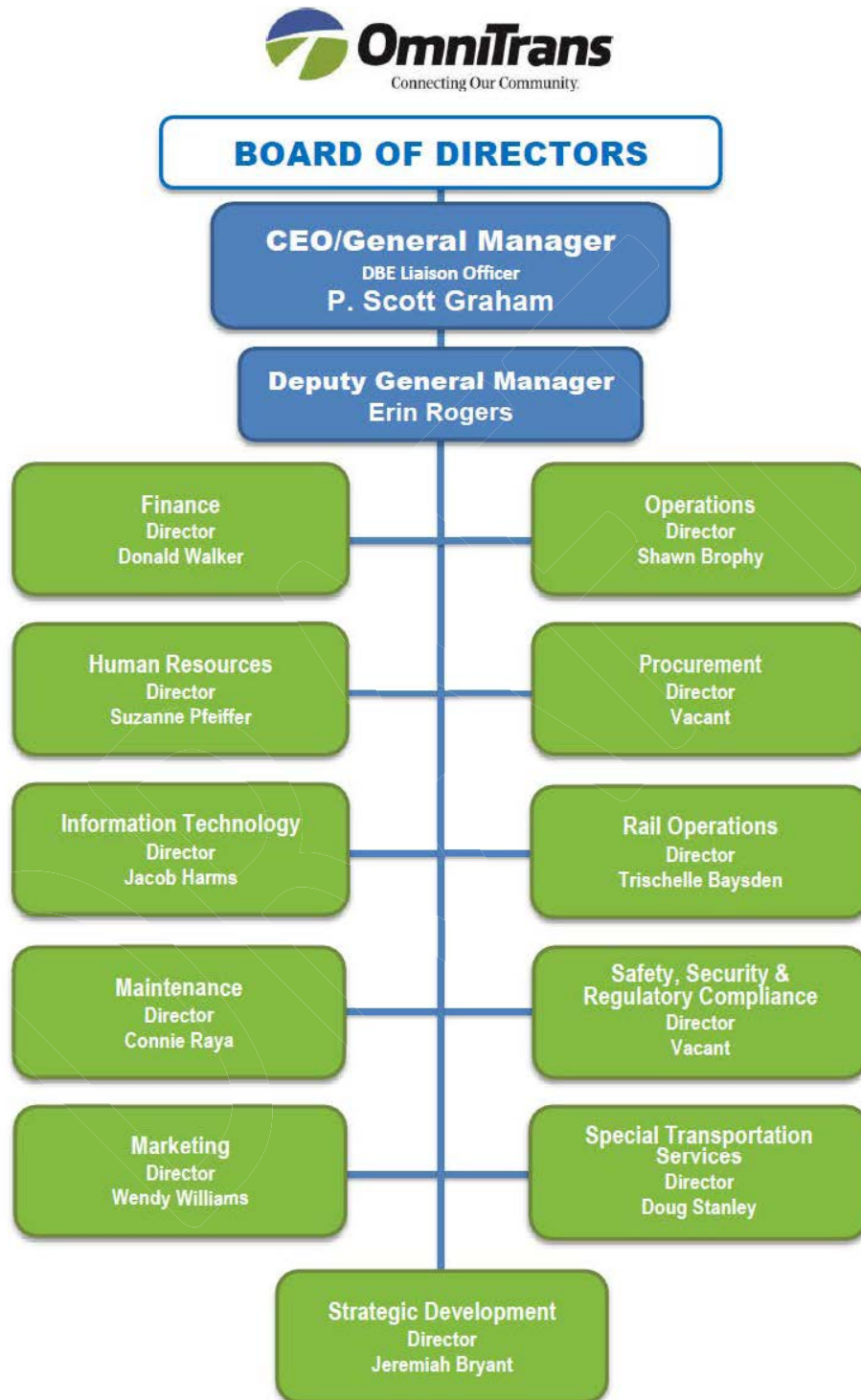


**EXHIBIT A: DBE PROGRAM REGULATIONS, TITLE 49 CFR PART 26**

The DBE program regulations can be found at the following website:

[https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26\\_main\\_02.tpl](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)

DRAFT


**EXHIBIT B: DBE PROGRAM ORGANIZATIONAL CHART**


**EXHIBIT C: DBE FINANCIAL INSTITUTIONS**

INSTITUTION/BRANCH	LOCATION(S)
AMERICAN CONTINENTAL BK	ARCADIA, CA; CHINO HILLS, CA; CITY OF INDUSTRY, CA; SAN GABRIEL, CA
AMERICAN FNB	ALHAMBRA, CA; CITY OF INDUSTRY, CA
AMERICAN PLUS BK NA	ARCADIA, CA; PASADENA, CA; ROWLAND HEIGHTS, CA
ASIAN PACIFIC NB	ROWLAND HEIGHTS, CA; SAN GABRIEL, CA
BANK OF GUAM	SAN FRANCISCO, CA
BANK OF HOPE	BUENA PARK, CA; CERRITOS, CA; COLTON, CA; DIAMOND BAR, CA; GARDEN GROVE, CA; GARDENA, CA; HUNTINGTON PARK, CA; IRVINE, CA; LA CRESCENTA, CA; LA PALMA, CA; LOS ANGELES, CA; NORTHRIDGE, CA; OAKLAND, CA; RANCHO CUCAMONGA, CA; ROWLAND HEIGHTS, CA; SAN DIEGO, CA; SUNNYVALE, CA; TORRANCE, CA; WALNUT, CA
BANK OF THE ORIENT	MILLBRAE, CA; OAKLAND, CA; PALO ALTO, CA; SAN FRANCISCO, CA
BANK OF WHITTIER NA	WHITTIER, CA
BROADWAY FED BK FSB	INGLEWOOD, CA; LOS ANGELES, CA
CALIFORNIA BUS BK	IRVINE, CA
CALIFORNIA INTL BK NA	WESTMINSTER, CA
CALIFORNIA PACIFIC BK	FREMONT, CA; SAN FRANCISCO, CA
CATHAY BK	ALHAMBRA, CA; ARCADIA, CA; ARTESIA, CA; CITY OF INDUSTRY, CA; CUPERTINO, CA; DIAMOND BAR, CA; DUBLIN, CA; EL MONTE, CA; FOUNTAIN VALLEY, CA; FREMONT, CA; IRVINE, CA; LOS ANGELES, CA; MILLBRAE, CA; MILPITAS, CA; MONTEREY PARK, CA; NORTHRIDGE, CA; OAKLAND, CA; ONTARIO, CA; ORANGE, CA; RANCHO CUCAMONGA, CA; RICHMOND, CA; ROWLAND HEIGHTS, CA; SACRAMENTO, CA; SAN DIEGO, CA; SAN FRANCISCO, CA; SAN GABRIEL, CA; SAN JOSE, CA; TEMPLE CITY, CA; TORRANCE, CA; UNION CITY, CA; WEST COVINA, CA; WESTMINSTER, CA
COMMERCIAL BK OF CALIFORNIA	ANAHEIM, CA; COSTA MESA, CA; IRVINE, CA; LOS ANGELES, CA; SANTA MONICA, CA; SHERMAN OAKS, CA
COMMONWEALTH BUS BK	BUENA PARK, CA; IRVINE, CA; LOS ANGELES, CA; TORRANCE, CA
COMMUNITY CMRC BK	CLAREMONT, CA; LOS ANGELES, CA; MONTEREY PARK, CA; TARZANA, CA; WOODLAND HILLS, CA
CTBC BK CORP USA	CITY OF INDUSTRY, CA; CUPERTINO, CA; IRVINE, CA; LOS ANGELES, CA; MILPITAS, CA; MONTEREY PARK, CA; SAN FRANCISCO, CA; SAN GABRIEL, CA; SAN MARINO, CA
EAST WEST BK	ALHAMBRA, CA; ANAHEIM, CA; ARCADIA, CA; ARTESIA, CA; BEVERLY HILLS, CA; CARSON, CA; CERRITOS, CA; CHINO HILLS, CA; CITY OF INDUSTRY, CA; CUPERTINO, CA; DALY CITY, CA; DIAMOND BAR, CA; EL MONTE, CA; ENCINO, CA; FREMONT, CA; GLENDALE, CA; IRVINE, CA; LOS ANGELES, CA; MILPITAS, CA; MONTEBELLO, CA; MONTEREY PARK, CA; NEWARK, CA; OAKLAND, CA; ONTARIO, CA; PALOS VERDES, CA; PASADENA, CA; PLEASANTON, CA; RANCHO CUCAMONGA, CA; ROSEMEAD, CA; ROWLAND HEIGHTS, CA; SACRAMENTO, CA; SAN DIEGO, CA; SAN FRANCISCO, CA; SAN GABRIEL, CA; SAN JOSE, CA; SAN MARINO, CA; SAN MATEO, CA; SOUTH PASADENA, CA; TEMPLE CITY, CA; TORRANCE, CA; VAN NUYS, CA; WALNUT, CA; WESTMINSTER, CA
EASTERN INTL BK	ALHAMBRA, CA; LOS ANGELES, CA
EVERTRUST BK	ALHAMBRA, CA; ARCADIA, CA; CERRITOS, CA; CITY OF INDUSTRY, CA; CUPERTINO, CA; IRVINE, CA; MILPITAS, CA; PASADENA, CA
FIRST CHOICE BK	ALHAMBRA, CA; ANAHEIM, CA; CARLSBAD, CA; CERRITOS, CA; CHULA VISTA, CA; LOS ANGELES, CA; PASADENA, CA; ROWLAND HEIGHTS, CA; SAN DIEGO, CA
FIRST CMRL BK USA	ALHAMBRA, CA; ARCADIA, CA; FREMONT, CA; IRVINE, CA; ROWLAND HEIGHTS, CA; SAN JOSE, CA
FIRST GEN BK	ARCADIA, CA; ARTESIA, CA; IRVINE, CA; ROWLAND HEIGHTS, CA; SAN GABRIEL, CA
GATEWAY BK FSB	OAKLAND, CA
GOLDEN BK NA	TUSTIN, CA
HANMI BK	ARTESIA, CA; BUENA PARK, CA; DIAMOND BAR, CA; GARDEN GROVE, CA; GARDENA, CA; IRVINE, CA; LOS ANGELES, CA; NORTHRIDGE, CA; ROWLAND HEIGHTS, CA; SAN DIEGO, CA; SAN FRANCISCO, CA; SANTA CLARA, CA; TORRANCE, CA; VAN NUYS, CA

INSTITUTION/BRANCH	LOCATION(S)
MEGA BK	ARCADIA, CA; HACIENDA HEIGHTS, CA; IRVINE, CA; ROWLAND HEIGHTS, CA; SAN GABRIEL, CA
METROPOLITAN BK	OAKLAND, CA; SAN FRANCISCO, CA; SAN JOSE, CA
MISSION NB	BERKELEY, CA; SAN FRANCISCO, CA
NEW OMNI BK NA	ALHAMBRA, CA; ARCADIA, CA; ROWLAND HEIGHTS, CA
ONEUNITED BK	GARDENA, CA; LOS ANGELES, CA; LYNWOOD, CA
OPEN BK	BUENA PARK, CA; GARDENA, CA; LOS ANGELES, CA; SANTA CLARA, CA
PACIFIC ALLI BK	IRVINE, CA; ROSEMEAD, CA; ROWLAND HEIGHTS, CA
PACIFIC CITY BK	ARTESIA, CA; BUENA PARK, CA; IRVINE, CA; LOS ANGELES, CA; ROWLAND HEIGHTS, CA; TORRANCE, CA
PREFERRED BK	ALHAMBRA, CA; ARCADIA, CA; CITY OF INDUSTRY, CA; DIAMOND BAR, CA; IRVINE, CA; LOS ANGELES, CA; PICO RIVERA, CA; SAN FRANCISCO, CA; TARZANA, CA; TORRANCE, CA
ROYAL BUS BK	ARCADIA, CA; CERRITOS, CA; DIAMOND BAR, CA; IRVINE, CA; LOS ANGELES, CA; MONTEREY PARK, CA; OXNARD, CA; ROWLAND HEIGHTS, CA; SAN GABRIEL, CA; TORRANCE, CA; WESTLAKE VILLAGE, CA
SHINHAN BK AMER	BUENA PARK, CA; IRVINE, CA; LOS ANGELES, CA; SAN DIEGO, CA; TORRANCE, CA
STATE BK OF INDIA CA	ARTESIA, CA; FREMONT, CA; FRESNO, CA; LOS ANGELES, CA; SAN DIEGO, CA; SAN JOSE, CA; TUSTIN, CA
UNITED PACIFIC BK	CITY OF INDUSTRY, CA; MONTEREY PARK, CA
UNITI BK	BUENA PARK, CA; GARDEN GROVE, CA; LOS ANGELES, CA
UNIVERSAL BK	ARCADIA, CA; LOS ANGELES, CA; MONTEREY PARK, CA; ROSEMEAD, CA; WEST COVINA, CA
US METRO BK	ANAHEIM, CA; GARDEN GROVE, CA; LOS ANGELES, CA
WALLIS BK	LOS ANGELES, CA

**EXHIBIT D: FORM 103- MONTHLY DBE SUBCONTRACTORS PAID REPORT SUMMARY AND PAYMENT VERIFICATION**

 <b>Summary of Disadvantaged Business Enterprise (DBE) - Subcontractors Paid Monthly Report</b>						
Reporting Period (Month/Year)			Report Number		Date Prepared	
1) Project Name		2) Project Location				
3) Contract Number		4) Original Contract Award Amount		5) Contract Award Date		
6) Current Contract Value		7) Omnitrans Payment to Prime This Month		8) Total Amount Paid to Prime to Date		
9) Date of Last Progress Payment Received from Omnitrans		10) Percent of Project Complete		11) DBE Goal Percentage (committed)		
12) Prime Contractor			13) Contact Person			
14) Street Address			15) City/State/Zip			
16) Area Code/Phone No.			17) Email Address			
18) SUBCONTRACTOR/SUPPLIER	Dollars Paid This Month	Dollar Amount Paid to Date	Schedule Activity ID (Construction only)	Type of Work Performed	Original Dollar Amount Committed	Dollar +/- resulting from Change Order Activity
<b>Subcontractor/Supplier #1</b>						
Name						
Address						
Area Code/Phone						
Contact Person						
<b>Subcontractor/Supplier #2</b>						
Name						
Address						
Area Code/Phone						
Contact Person						
<b>Subcontractor/Supplier #3</b>						
Name						
Address						
Area Code/Phone						
Contact Person						



### Summary of Disadvantaged Business Enterprise (DBE) - Subcontractors Paid Monthly Report

Reporting Period (Month/Year)	Report Number	Date Prepared
-------------------------------	---------------	---------------

<b>Subcontractor/Supplier #4</b>							
Name							
Address							
Area Code/Phone							
Contact Person							
<b>Subcontractor/Supplier #5</b>							
Name							
Address							
Area Code/Phone							
Contact Person							
<b>Subcontractor/Supplier #6</b>							
Name							
Address							
Area Code/Phone							
Contact Person							

#### INSTRUCTIONS

The Prime shall make prompt payment of all monies due and owed to DBE and non-DBE firms within 10 business days upon receipt of payment from Omnitrans as per Contract Agreement. Payment of retention shall be made to all DBE and non-DBE subcontractors within 10 days after satisfactory completion of the subcontracted work.

This form is due to Omnitrans by the 15<sup>th</sup> of each month and should reflect all payments made to subs through the last day of the previous month.

The Prime must report monthly, even if the sub(s) did not perform any work for the previous month. Please forward signed original documents by email and/or fax.

#### Completed By:

Name	Signature	Date



### Summary of Disadvantaged Business Enterprise (DBE) - Subcontractors Paid Monthly Report

Reporting Period (Month/Year)	Report Number	Date Prepared
-------------------------------	---------------	---------------

### Invoice Payment History

DBE Subcontractors/Suppliers		Sub/Supplier #1	Sub/Supplier #2	Sub/Supplier #3	Sub/Supplier #4	Sub/Supplier #5	Sub/Supplier #6	DBE Sub/Supplier Total
Invoice Numbers	Invoice Date and Date Paid	Amount Paid \$	Amount Paid \$	Amount Paid \$	Amount Paid \$	Amount Paid \$	Amount Paid \$	Amount Paid \$
<b>GRAND TOTAL (Paid to Date)</b>								



**Summary of Disadvantaged Business Enterprise (DBE) - Subcontractors Paid Monthly Report**

Reporting Period (Month/Year)	Report Number	Date Prepared
-------------------------------	---------------	---------------

**Instructions – Summary of Monthly DBE Payments Information****SUCCESSFUL BIDDER:**

This form requires specific information regarding the disadvantaged business enterprise subcontractors paid on this construction contract.

The form must be completed for all DBEs. The form requires that the Reporting Period (month/year) be included. A Report Number should also be completed. This field should include a sequential number with the first form having number "1". The date prepared should also be included.

**IMPORTANT:** Identify **all** DBE firms that were paid during the reporting period for the project, regardless of tier. Names of the First Tier DBE Subcontractors and their respective item(s) of work listed should be consistent, where applicable, with the names and items of work in the "List of Subcontractors" submitted with your bid.

There is a column for the "Dollars Paid This Month". Enter the Total amount paid for each DBE firm for the reporting period. Also include the total amount paid to date, which shall include the amount paid for the current reporting period.

Include the Schedule Activity ID for construction contracts. Include a brief description for the type of work performed. The original dollar amount committed to the DBE firm should be included in the appropriate Column and any increase or decrease in the subcontract amount resulting from a change order shall be included in the "Dollar +/- resulting from Change Order Activity" column.

This form must be signed and dated by the prime contractor's representative that is responsible for reporting DBE compliance matters. The form must be submitted no later than the 15<sup>th</sup> day of each month.



**EXHIBIT E: UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS**

UNIFORM REPORT OF DBE COMMITMENTS/AWARDS AND PAYMENTS										
**Please refer to the instruction sheet for directions on filling out this form**										
1	Submitted to (check only one)	<input type="checkbox"/> FHWA	<input type="checkbox"/> FAA	<input type="checkbox"/> FTA - Recipient ID Number						
2	AIP Numbers (FAA Recipients); Grant Number (FTA Recipients):									
3	Federal Fiscal year in which reporting period falls	FY 2017			4. Date This Report Submitted:					
5	Reporting Period	<input type="checkbox"/> Report due June 1 (for period Oct 1-Mar 31)			<input type="checkbox"/> Report due Dec 1 (for period April 1-Sep 30)			<input type="checkbox"/> FAA annual report due Dec 1		
6	Name and address of Recipient:									
7	Annual DBE Goal(s):	Race Conscious Projection:			Race Neutral Projection:			OVERALL Goal:		
Awards/Commitments this Reporting Period										
A	AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD (Total contracts and subcontracts committed during this reporting period)	A Total Dollars	B Total Number	C Total to DBEs (dollars)	D Total to DBEs (number)	E Total to DBEs/Race Conscious (dollars)	F Total to DBEs/Race Conscious (number)	G Total to DBEs/Race Neutral (dollars)	H Total to DBEs/Race Neutral (number)	I Percentage of total dollars to DBEs
8	Prime contracts awarded this period	\$ -	0	\$ -	0			\$ -	0	#DIV/0!
9	Subcontracts awarded/committed this period	\$ -	0	\$ -	0	\$ -	0	\$ -	0	#DIV/0!
10	<b>TOTAL</b>			\$ -	0	\$ -	0	\$ -	0	#DIV/0!
B	BREAKDOWN BY ETHNICITY & GENDER	A	B	C	D	E	F			
		Total to DBE (dollar amount)			Total to DBE (number)					
		Women	Men	Total	Women	Men	Total			
11	Black American	\$ -	\$ -	\$ -	0	0	0			
12	Hispanic American	\$ -	\$ -	\$ -	0	0	0			
13	Native American	\$ -	\$ -	\$ -	0	0	0			
14	Asian-Pacific American	\$ -	\$ -	\$ -	0	0	0			
15	Subcontinent Asian Americans	\$ -	\$ -	\$ -	0	0	0			
16	Non-Minority	\$ -	\$ -	\$ -	0	0	0			
17	<b>TOTAL</b>	\$ -	\$ -	\$ -	0	0	0			
Payments Made this Period										
C	PAYMENTS ON ONGOING CONTRACTS	A Total Number of Contracts	B Total Dollars Paid	C Total Number of Contracts with DBEs	D Total Payments to DBE firms	E Total Number of DBE firms Paid	F Percent to DBEs			
18	Prime and subcontracts currently in progress	0	\$ -	0	\$ -	0	#DIV/0!			
D	TOTAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD	A Number of Contracts Completed	B Total Dollar Value of Contracts Completed	C DBE Participation Needed to Meet Goal (Dollars)	D Total DBE Participation (Dollars)	E Percent to DBEs				
19	Race Conscious	0	\$ -	\$ -	\$ -	#DIV/0!				
20	Race Neutral	0	\$ -	\$ -	\$ -	#DIV/0!				
21	<b>Totals</b>	0	\$ -	\$ -	\$ -	#DIV/0!				
22	Submitted by:			23. Signature:			24. Phone Number:			

ITEM # \_\_\_\_\_ F4 \_\_\_\_\_

**DATE:** July 10, 2019

**TO:** Board Chair David Avila and Members of the Omnitrans Board of Directors

**THROUGH:** P. Scott Graham, CEO/General Manager

**FROM:** Eugenia F. Pinheiro, Contracts Manager

**SUBJECT: REVISED PROPOSED OVERALL DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOAL FOR FEDERAL TRANSIT ADMINISTRATION (FTA) ASSISTED CONTRACTS (OCTOBER 1, 2018 – SEPTEMBER 30, 2021)**

### **FORM MOTION**

Adopt the Revised Proposed Overall Triennial Disadvantaged Business Enterprise (DBE) Participation Goal of ~~65~~.1% for all Federal Transit Administration (FTA) assisted contracts issued during Federal Fiscal Years (FFY) 2019-2021 and authorize the CEO/General Manager to submit the goal and all supporting documentation to the FTA.

### **BACKGROUND**

As a condition of receiving U.S. Department of Transportation (USDOT) grants, Omnitrans is required to develop and submit an overall triennial DBE goal for DBE participation. Omnitrans must comply with the FTA's DBE Program in accordance with Title 49, Code of Federal Regulations (CFR) Part 26. The DBE Program is designed to enable small businesses owned and controlled by socially disadvantaged individuals to compete for federally funded contracts.

Omnitrans identified FTA-assisted projects anticipated to be solicited during the FFY2019-2021 triennial contracting period. In accordance with FTA requirements, Omnitrans submitted its proposed goal setting methodology for FFY 2019-2021 in August 2018. FTA's Triennial DBE Goal Submission Concur Letter was received in September 2018. At the time of the original submission, the Redlands Passenger Rail Project (Arrow) was not identified as an FTA-assisted project. Omnitrans is revising the overall triennial DBE goal to allow for the inclusion of the Arrow project.

The overall goal was established utilizing the federal two-step methodology. The revised report includes the methodology and calculations used to develop the proposed triennial goal. Step 1 establishes a base figure utilizing quantifiable evidence of the relative availability of DBEs within specified industries corresponding to Omnitrans' FTA-assisted contracting opportunities

anticipated to be awarded within the respective goal period. Omnitrans utilized the California Unified Certification Program (CUCP) Directory of Certified DBE firms and the 2016 United States Census Bureau County Business Patterns North American Industrial Classification System (NAICS) database within Omnitrans' market area (defined as San Bernardino County) for each of the categories of work.

Step 2 of the process requires Omnitrans to survey and assess other known relevant evidence to determine what additional adjustment, if any, are needed to narrowly tailor the base figure to Omnitrans' market area, in accordance with provisions set forth under 49 CFR part 26.45.

The Revised Proposed Overall DBE Goal for FFYs 2019-2021 for FTA-assisted contracts is ~~65~~.1%. Omnitrans will issue a public notice on Omnitrans' website announcing the proposed Revised Proposed FTA Overall DBE Goal Setting Methodology for FFYs 2019 - 2021. Omnitrans will accept comments on the triennial goal through July ~~24~~9, 2019.

In response to race-neutral policy directives issued by the USDOT, Omnitrans utilizes a strictly race-neutral program. In a strictly race-neutral program, Omnitrans may not set numeric contract goals on any of its USDOT-assisted contracts for which DBE subcontracting opportunities exist. The application of race-neutral measures is in direct response to the Ninth Circuit U.S. Court of Appeals decision in *Western States Paving Co. v United States & Washington State Department of Transportation*, whereby the FTA issued a Notice (Guidance) for Public Transportation Providers (Docket No. FTA-2006-24063).

Based on the Guidance, each recipient was requested to do the following:

- If a recipient does not currently have sufficient evidence of discrimination of its effects, then the recipient would submit an all-race-neutral Overall DBE Goal.
- The recipient's submission shall include a statement concerning the absence of adequate evidence of discrimination and its effects and a description of plans to either conduct a disparity/availability study or other appropriate evidence gathering process to determine the existence of discrimination or its effects on the recipient's marketplace.
- An action plan describing the study and timeline for its completion should also be included.

Omnitrans is required to perform the appropriate evidence gathering process to determine the existence of discrimination and its effects on its respective marketplace to effectively respond to the Court's ruling and the USDOT's directive (Docket No. FTA-2006-24063; Supplemental Notice dated August 21, 2006). Staff determined it is not feasible for Omnitrans, nor is it required, to conduct its own independent disparity study.

## **FUNDING SOURCE**

Approval of the DBE provisions to comply with 49 CFR §26.5 has no budget impact.

## **CONCLUSION**

| Approval of Omnitrans' revised proposed Overall Triennial DBE Participation Goal of ~~65~~.1% for FFYs 2019-2021 will allow Omnitrans to submit the Overall DBE Goal-Setting Methodology documents in compliance with Title 49 CFR Part 26.

PSG:EFP:CVM

Attachment A: Federal Transit Administration (FTA) Overall Disadvantaged Business Enterprise (DBE) Goal Setting Methodology (FFY2019-2021)



**Federal Transit Administration (FTA)  
Overall Disadvantaged Business Enterprise (DBE)  
Goal-Setting Methodology**

**Federal Fiscal Years (FFY) 2019-2021**

**Goal Period**

**REVISED**

Submitted in fulfillment of:  
Title 49 Code of Federal Regulations Part 26

## I. Contents

II.	INTRODUCTION .....	3
III.	BACKGROUND .....	3
IV.	FTA-ASSISTED CONTRACTING PROGRAM FOR FFY 2019-2021 .....	3
	Market Area .....	3
	Anticipated Projects.....	4
	Subrecipients .....	<u>56</u>
	Categories of Work .....	<u>67</u>
V.	GOAL METHODOLOGY .....	<u>89</u>
	Step 1: Determination of a Base Figure (26.45) .....	<u>89</u>
	Step 2: Adjusting the Base Figure .....	<u>1114</u>
	1) Past DBE Goal Attainments.....	<u>1114</u>
	2) Disparity Studies .....	<u>1215</u>
	3) Other Available Evidence .....	<u>1215</u>
VI.	PROPOSED OVERALL DBE GOAL .....	<u>1215</u>
VII.	RACE-NEUTRAL IMPLEMENTATION MEASURES .....	<u>1316</u>
VIII.	PUBLIC PARTICIPATION AND FACILITATION .....	<u>1418</u>
	ATTACHMENT 1: Website Notification .....	<u>1619</u>

# DBE GOAL METHODOLOGY

## II. INTRODUCTION

Omnitrans submitted its Overall Disadvantaged Business Enterprise (DBE) Goal and corresponding federally prescribed goal-setting methodology for the three-year Federal Fiscal Year (FFY) goal period of 2019-2021 on August 1, 2018. Omnitrans received a concur letter from FTA dated September 20, 2018. At the time of the original submission, the Redlands Passenger Rail Project (Arrow) was not identified as an FTA-assisted project. Omnitrans is revising the overall triennial DBE goal to allow for the inclusion of the Arrow project. The project includes the demolition and reconstruction of approximately 42,800 track feet (8.11 track miles) of new, continuously-welded rail, ties, ballast and roadbed from the San Bernardino Transit Center to beyond the University of Redlands. Additionally, the project consists of the construction of Rail Storage and Maintenance Facility for the Redlands Passenger Rail Project.

Omnitrans subsequently reached out to FTA to advise them that a revised DBE Goal Methodology would be developed and submitted for FFY 2019-2021. Omnitrans herein sets forth its Revised Overall DBE Goal and corresponding federally prescribed goal-setting methodology for FFY 2019-2021. The purpose of the DBE goal-setting process is to level the playing field so that DBEs can compete fairly for Department of Transportation-assisted contracts, however, the program must be narrowly tailored in accordance with applicable law.

## III. BACKGROUND

Omnitrans is a recipient of U.S. Department of Transportation (USDOT), Federal Transit Administration (FTA), funding. As a condition of receiving this assistance, Omnitrans signed an assurance that it will comply with FTA DBE requirements. In accordance with Title 49 CFR Part 26 provisions: Participation by DBEs in USDOT Programs, Omnitrans is required to develop and submit an overall Triennial DBE Goal for its FTA-assisted projects.

Omnitrans herein presents its Revised Overall DBE Goal Methodology for FFY 2019-2021.

## IV. FTA-ASSISTED CONTRACTING PROGRAM FOR FFY 2019-2021

### Market Area

The Federal DBE program requires agencies to implement the DBE program based on information from the relevant geographic market area—the area in which the agency spends the substantial majority of its contracting dollars.

The Omnitrans local market for contracts consists of a geographic area that is:

- where a large majority of contracting dollars is expended, and
- where a substantial number of contractors and subcontractors are located and available to submit bids, quotes, or proposals.

The Omnitrans bidder's list was reviewed and analyzed to determine where Omnitrans spends the substantial majority of its contracting dollars. This analysis confirmed the previously recognized market area of San Bernardino county.

## Anticipated Projects

OmniTrans has 40 FTA-assisted projects that are anticipated to be awarded during the triennial period and which were considered in preparing this goal methodology. This includes two (2) projects their subrecipient anticipates awarding. These projects and their federal share are listed in Table 1.

- Column A lists the name and brief description of each project.
- Column B lists the total estimated cost of each project.
- Column C lists the estimated FTA dollar share for each project.
- Column D lists estimated FTA percentage share for each project.

**Table 1**

A Project Name/Description	B Total Estimated Project Cost	C Estimated FTA \$ Share	D Estimated FTA % Share
A&E Services for construction projects	\$2,000,000	\$1,600,000	80.0%
Alternative Energy Maintenance: solar and battery storage	\$3,000,000	\$2,400,000	80.0%
Board Room Refresh: flat screen TVs, upgrades to lighting, audio, and teleconferencing	\$250,000	\$200,000	80.0%
Brake Shoes	\$566,500	\$453,200	80.0%
CCTV/ Video Surveillance: camera system for Omni buildings and along sbX corridor	\$1,000,000	\$800,000	80.0%
Collision Avoidance System	\$1,700,000	\$850,000	50.0%
Compressed Natural Gas Maintenance: maintained CNG fueling equipment	\$900,000	\$720,000	80.0%
Concrete & Asphalt Repair	\$648,625	\$534,900	82.5%
Conference Room Refresh: new projectors	\$80,000	\$64,000	80.0%
Elevator Modernization: upgrade controls	\$330,000	\$264,000	80.0%
e-recruit Software	\$60,000	\$48,000	80.0%
Esigns: messaging signs for bus arrival info	\$200,000	\$200,000	100.0%
Eye Wash Stations	\$50,000	\$40,000	80.0%
Fire Extinguisher Services	\$14,667	\$11,734	80.0%
Genfare Parts: for fareboxes and ticket vending machines	\$800,000	\$640,000	80.0%
Haz Waste Treatment/Transportation: pick-up hazardous materials on regular basis; emergency clean-up	\$283,250	\$226,600	80.0%
HVAC/ IT closet upgrade: AC units/electrical	\$1,000,000	\$800,000	80.0%
I Street Facility/ Building Renovation	\$3,000,000	\$1,500,000	50.0%
Industrial Chemicals - cleaning	\$40,000	\$32,000	80.0%
Miscellaneous Bus Parts	\$1,732,960	\$1,386,368	80.0%
Maintenance, Repair, and Operations Supplies: and vending machines for supplies; keep stocked; requires reporting	\$700,000	\$560,000	80.0%
Methane Detection: calibration/repair	\$30,000	\$24,000	80.0%
Mobile Fare Validation: on-board equipment to read mobile fare	\$100,000	\$80,000	80.0%
Network Equipment Upgrade Server	\$100,000	\$80,000	80.0%
New Flyer Bus Parts	\$1,504,350	\$1,203,480	80.0%



A	B	C	D
Project Name/Description	Total Estimated Project Cost	Estimated FTA \$ Share	Estimated FTA % Share
Onboard Radio Communication	\$171,280	\$137,024	80.0%
On-Board Video Surveillance System hardware upgrades: servers	\$80,000	\$64,000	80.0%
Parking Lot Sweeping	\$238,837	\$191,070	80.0%
Parts Washer: equipment	\$80,000	\$64,000	80.0%
Pest Control Services: indoor/outdoor	\$26,919	\$21,535	80.0%
Rail Operations & Maintenance Project	\$97,000,000	\$25,000,000	25.8%
Safety Management Software	\$110,000	\$88,000	80.0%
SAP EHP 7 Software	\$300,000	\$300,000	100.0%
Shelters/Premium Shelters (at bus stops)	\$600,000	\$480,000	80.0%
Training Management Software (HR)	\$100,000	\$80,000	80.0%
Transit Asset Management Software (consulting for Omnitrans ERP/SAP system)	\$2,500,000	\$2,000,000	80.0%
Trapeze WEB STS Software	\$175,000	\$140,000	80.0%
Underground Storage Tank/AST Testing and Repair	\$87,460	\$69,968	80.0%
Redlands Passenger Rail Project : The project entails the demolition and reconstruction of approximately 42,800 track feet (8.11 track miles) of new, continuously-welded rail, ties, ballast and roadbed from the San Bernardino Transit Center to beyond the University of Redlands. The RPRP will have: 24 road crossing replacements with new track and signal appliances; 4 newly constructed bridges, including the Santa Ana River bridge; 1 bridge rehabilitation requiring new deck, ties, rail and ballast; 4 newly constructed passenger stations; and 1 modified station at SBTC.	\$358,579,442	\$85,997,614	24.0%
SBCTA Vanpool	\$4,000,000	\$1,000,000	25.0%
	<b>\$484,139,290</b>	<b>\$130,351,493</b>	<b>26.9%</b>

### Subrecipients

Omnitrans reallocates FTA funds to the San Bernardino County Transportation Authority (SBCTA). The SBCTA, as a subrecipient, has signed an implementation agreement with Omnitrans and agrees to provide all reporting to Omnitrans. Omnitrans includes all subrecipient projects in agency reporting.

SBCTA has two (2) projects that are shaded in Table 1 above; the Redlands Passenger Rail Project and the SBCTA Vanpool project.

SBCTA was awarded a FTA 2016 Discretionary TIGER Grant totaling \$8,678,312 for the Redlands Passenger Rail Project (RPRP). SBCTA is a subrecipient of Omnitrans. With guidance from the FTA, the entire award will be allocated to the Positive Train Control (PTC) system for the RPRP. SBCTA will utilize the Grant for a Positive Train Control (PTC) system for the RPRP. The contract award does not provide open contracting opportunities and will be an ongoing contract.

## Categories of Work

OmniTrans reviewed each project anticipated to be awarded in the triennial period and determined the applicable categories of work applicable for each project using North American Industry Classification System (NAICS) codes. The corresponding dollar values for each NAICS code for each project were summarized for purposes of weighting the categories of work based on the staff estimates. Table 2 provides a summary of the categories of work with estimated dollars for each.

- Column A lists the category of work (NAICS) code and title.
- Column B lists the estimated FTA dollar share for each NAICS code.
- Column C lists the estimated percentage of each NAICS code (the estimated FTA dollars for each NAICS code divided by the grand total of all estimated FTA dollars).

**Table 2**

A	B	C
NAICS Code Category of Work	Estimated FTA Dollars by NAICS	Estimated FTA % by NAICS
213112: Support activities for oil and gas operations	\$69,968	0.1%
236220: Commercial and institutional building construction	\$480,000	0.4%
237310: Highway, street, and bridge construction	\$1,603,031	1.2%
237990: Other heavy and civil engineering construction	\$70,918,269	54.4%
238110: Poured concrete foundation and structure contractors	\$1,914,221	1.5%
238120: Structural steel and precast concrete contractors	\$1,347,731	1.0%
238140: Masonry contractors	\$663,922	0.5%
238160: Roofing contractors	\$750,602	0.6%
238210: Electrical contractors and other wiring installation contractors	\$7,014,914	5.4%
238220: Plumbing, heating, and air-conditioning contractors	\$2,006,628	1.5%
238290: Other building equipment contractors	\$112,281	0.1%
238310: Drywall and insulation contractors	\$75,000	0.1%
238320: Painting and wall covering contractors	\$75,000	0.1%
238350: Finish carpentry contractors	\$45,000	0.0%
238910: Site preparation contractors	\$1,421,346	1.1%
238990: All other specialty trade contractors	\$1,348,982	1.0%
314110: Carpet and Rug Mills	\$75,000	0.1%
326199: All other plastics product manufacturing	\$56,140	0.0%
331511: Iron foundries	\$453,200	0.3%
332311: Prefabricated metal building and component manufacturing	\$697,746	0.5%
332312: Fabricated structural metal manufacturing	\$798,949	0.6%
332322: Sheet metal work manufacturing	\$136,789	0.1%
332323: Ornamental and architectural metal work manufacturing	\$416,525	0.3%
333912: Air and gas compressor manufacturing	\$61,856	0.0%
333923: Overhead traveling crane, hoist, and monorail system manufacturing	\$145,498	0.1%
333999: All other miscellaneous general-purpose machinery manufacturing	\$41,237	0.0%

A	B	C
NAICS Code Category of Work	Estimated FTA Dollars by NAICS	Estimated FTA % by NAICS
334511: Search, detection, navigation, guidance, aeronautical, and nautical system and instrument manufacturing	\$850,000	0.7%
336211: Motor vehicle body manufacturing	\$1,386,368	1.1%
423120: Motor vehicle supplies and new parts merchant wholesalers	\$1,843,480	1.4%
423440: Other commercial equipment merchant wholesalers	\$64,000	0.0%
423450: Medical, dental, and hospital equipment and supplies merchant wholesalers	\$40,000	0.0%
423490: Other professional equipment and supplies merchant wholesalers	\$560,000	0.4%
424690: Other chemical and allied products merchant wholesalers	\$32,000	0.0%
448190: Other clothing stores	\$24,742	0.0%
488210: Support activities for rail transportation	\$23,753,608	18.2%
517210: Wireless telecommunications carriers (except satellite)	\$137,024	0.1%
532112: Passenger Car Leasing	\$634,786	0.5%
541330: Engineering services	\$1,600,000	1.2%
541370: Surveying and mapping (except geophysical) services	\$134,720	0.1%
541380: Testing laboratories	\$619,761	0.5%
541511: Custom computer programming services	\$2,754,126	2.1%
541512: Computer systems design services	\$144,000	0.1%
541611: Administrative management and general management consulting services	\$227,536	0.2%
541613: Marketing consulting services	\$19,283	0.0%
541690: Other scientific and technical consulting services	\$451,441	0.3%
561110: Office administrative services	\$23,139	0.0%
561439: Other business service centers (including copy shops)	\$77,131	0.1%
561710: Exterminating and pest control services	\$27,720	0.0%
561720: Janitorial services	\$577,320	0.4%
561730: Landscaping services	\$105,928	0.1%
561790: Other services to buildings and dwellings	\$201,379	0.2%
562112: Hazardous waste collection	\$51,546	0.0%
562910: Remediation services	\$226,600	0.2%
811121: Automotive body, paint, and interior repair and maintenance	\$206,186	0.2%
811192: Car washes	\$103,093	0.1%
811310: Commercial and industrial machinery and equipment (except automotive and electronic) repair and maintenance	\$744,742	0.6%
	<b>\$130,351,493</b>	<b>100.0%</b>

## V. GOAL METHODOLOGY

### Step 1: Determination of a Base Figure (26.45)<sup>1</sup>

To establish the Omnitrans Base Figure of the relative availability of DBEs relative to all comparable firms (DBE and non-DBE) available to bid or submit proposals on Omnitrans FTA-assisted contracting opportunities projected to be solicited during the triennial goal period, Omnitrans followed the prescribed federal methodology to determine relative availability. This was accomplished by assessing the *California Unified Certification Program (CUCP) DBE Database of Certified Firms* and the *2016 U.S. Census Bureau County Business Patterns Database* within the Omnitrans market area (defined as San Bernardino County) for each of the categories of work defined in Table 2.

In accordance with the formula listed below, the Base Figure is derived by:

- dividing the number of ready, willing and able DBE firms identified for each NAICS work category by the number of all firms identified within the SAN market area for each corresponding work category (*relative availability*),
- weighting the relative availability for each work category by the corresponding work category weight from Table 2 (*weighted ratio*), and
- Adding the weighted ratio figures together.

$$\text{Base Figure} = \sum \frac{(\text{Number of Ready, Willing and Able DBEs})}{(\text{Number of All Ready, Willing and Able Firms})} \times \text{Weighted Ratio}$$

⇒ For the numerator: CUCP DBE Database of Certified Firms

⇒ For the denominator: 2016 U.S. Census Bureau County Business Patterns Database

A concerted effort was made to ensure that the scope of businesses included in the numerator were as close as possible to the scope included in the denominator. The result of the Base Figure calculation is shown in Table 3.

- Column A lists the category of work (NAICS) code and title.
- Column B lists the estimated percentage of each NAICS code (the estimated FTA dollars for each NAICS code divided by the grand total of all estimated FTA dollars) from Table 2.
- Column C lists number of DBEs in the market area for each NAICS code from the California Unified Certification Program (CUCP) DBE Database of Certified Firms.
- Column D lists number of all firms (DBE and non-DBE) in the market area for each NAICS code from the 2016 U.S. Census Bureau County Business Patterns Database.
- Column E lists the DBE availability for each NAICS code (the number of DBEs divided by the number of all firms, multiplied by the estimated NAICS percentage).
- The weighted base figure is the sum of the DBE availability for each NAICS code.

<sup>1</sup> 26.45 represents Title 49 CFR Part 26 regulatory goal setting methodology reference.

**Table 3**

A	B	C	D	E
NAICS Code Category of Work	Estimated FTA % by NAICS	DBEs	All Firms	Weighted Ratio
213112: Support activities for oil and gas operations	0.1%	0	4	0.0%
236220: Commercial and institutional building construction	0.4%	14	207	0.0%
237310: Highway, street, and bridge construction	1.2%	11	48	0.3%
237990: Other heavy and civil engineering construction	54.4%	6	24	13.6%
238110: Poured concrete foundation and structure contractors	1.5%	8	116	0.1%
238120: Structural steel and precast concrete contractors	1.0%	6	38	0.2%
238140: Masonry contractors	0.5%	4	53	0.0%
238160: Roofing contractors	0.6%	1	114	0.0%
238210: Electrical contractors and other wiring installation contractors	5.4%	12	387	0.2%
238220: Plumbing, heating, and air-conditioning contractors	1.5%	5	471	0.0%
238290: Other building equipment contractors	0.1%	1	32	0.0%
238310: Drywall and insulation contractors	0.1%	3	109	0.0%
238320: Painting and wall covering contractors	0.1%	1	141	0.0%
238350: Finish carpentry contractors	0.0%	1	126	0.0%
238910: Site preparation contractors	1.1%	11	132	0.1%
238990: All other specialty trade contractors	1.0%	9	178	0.1%
314110: Carpet and Rug Mills	0.1%	0	0	0.0%
326199: All other plastics product manufacturing	0.0%	0	57	0.0%
331511: Iron foundries	0.3%	0	1	0.0%
332311: Prefabricated metal building and component manufacturing	0.5%	0	4	0.0%
332312: Fabricated structural metal manufacturing	0.6%	2	19	0.1%
332322: Sheet metal work manufacturing	0.1%	2	38	0.0%
332323: Ornamental and architectural metal work manufacturing	0.3%	1	13	0.0%
333912: Air and gas compressor manufacturing	0.0%	0	4	0.0%
333923: Overhead traveling crane, hoist, and monorail system manufacturing	0.1%	0	2	0.0%
333999: All other miscellaneous general-purpose machinery manufacturing	0.0%	0	3	0.0%
334511: Search, detection, navigation, guidance, aeronautical, and nautical system and instrument manufacturing	0.7%	0	3	0.0%

A	B	C	D	E
NAICS Code Category of Work	Estimated FTA % by NAICS	DBEs	All Firms	Weighted Ratio
336211: Motor vehicle body manufacturing	1.1%	0	8	0.0%
423120: Motor vehicle supplies and new parts merchant wholesalers	1.4%	0	203	0.0%
423440: Other commercial equipment merchant wholesalers	0.0%	0	28	0.0%
423450: Medical, dental, and hospital equipment and supplies merchant wholesalers	0.0%	0	61	0.0%
423490: Other professional equipment and supplies merchant wholesalers	0.4%	0	12	0.0%
424690: Other chemical and allied products merchant wholesalers	0.0%	3	48	0.0%
448190: Other clothing stores	0.0%	0	48	0.0%
488210: Support activities for rail transportation	18.2%	1	5	3.6%
517210: Wireless telecommunications carriers (except satellite)	0.1%	0	87	0.0%
532112: Passenger Car Leasing	0.5%	0	0	0.0%
541330: Engineering services	1.2%	13	214	0.1%
541370: Surveying and mapping (except geophysical) services	0.1%	4	31	0.0%
541380: Testing laboratories	0.5%	3	28	0.1%
541511: Custom computer programming services	2.1%	4	132	0.1%
541512: Computer systems design services	0.1%	6	128	0.0%
541611: Administrative management and general management consulting services	0.2%	17	182	0.0%
541613: Marketing consulting services	0.0%	3	104	0.0%
541690: Other scientific and technical consulting services	0.3%	5	133	0.0%
561110: Office administrative services	0.0%	2	161	0.0%
561439: Other business service centers (including copy shops)	0.1%	0	28	0.0%
561710: Exterminating and pest control services	0.0%	0	77	0.0%
561720: Janitorial services	0.4%	1	198	0.0%
561730: Landscaping services	0.1%	2	266	0.0%
561790: Other services to buildings and dwellings	0.2%	0	78	0.0%
562112: Hazardous waste collection	0.0%	2	9	0.0%
562910: Remediation services	0.2%	1	22	0.0%
811121: Automotive body, paint, and interior repair and maintenance	0.2%	1	170	0.0%
811192: Car washes	0.1%	4	113	0.0%
811310: Commercial and industrial machinery and equipment (except automotive and electronic) repair and maintenance	0.6%	1	129	0.0%

A	B	C	D	E
NAICS Code Category of Work	Estimated FTA % by NAICS	DBEs	All Firms	Weighted Ratio
Weighted Base Figure				<del>14.4%</del> 18.6%

### Step 2: Adjusting the Base Figure

Upon establishing the Base Figure, Omnitrans reviewed and assessed other known evidence potentially impacting the relative availability of DBEs within the market area, in accordance with prescribed narrow tailoring provisions as set forth under 49 CFR Part 26.45: Step 2, DBE Goal Adjustment Guidelines.

Evidence considered in making adjustments to the Base Figure included Past DBE Goal Attainments and Other Evidence, as follows:

#### **1) Past DBE Goal Attainments**

Historical DBE participation attainments provide demonstrable evidence of DBE availability and capacity to perform on Omnitrans projects. The projects anticipated to be awarded during the triennial period are substantially similar to those awarded in the recent past with the exception of the Redlands Passenger Rail Project. Omnitrans proceeded to calculate past DBE participation attainments for the three (3) federal fiscal years, for which DBE attainment data is available. The table below reflects the demonstrated capacity of DBEs (measured by actual historical DBE participation attainments) on FTA-assisted contracts awarded by Omnitrans within the last three (3) federal fiscal years.

**Table 4**

FEDEAL FISCAL YEAR (FFY)	FTA DBE GOAL %	FTA DBE ATTAINMENT %
2013/2014	8.4%	3.3%
2014/2015	8.4%	2.6%
2015/2016	3.5%	3.0%
2016/2017	3.5%	1.0%
2017/2018	3.5%	1.1%
<b>Median DBE Attainment Within the Last Three (3) Years</b>		<b>2.6%</b>

The median established for the past three years is lower than the Base Figure derived from Step 1; therefore, an adjustment to the Base Figure based on Omnitrans past DBE goal attainments has been made. The adjustment is calculated in accordance with FTA guidance by averaging the Base Figure with the median DBE Past Attainment, as shown below.

Base Figure (A)	<del>14.4%</del> 18.6%
Median DBE Attainment (B)	2.6%



**Adjusted Base Figure  
[(A+B)/2]**

~~8.5%~~10.6%

## 2) Disparity Studies

Omnitrans has not conducted an Availability and Disparity Study but has reviewed the draft results from the Caltrans 2018 FTA Disparity Study. The data analyzed is similar to Omnitrans' current projected FTA-assisted contracts for this upcoming triennial period.

Omnitrans has elected to use the Caltrans 2018 FTA Disparity Study data as a basis for adjusting the base figure for this goal period.

Base Figure (A)	<del>8.5%</del> <u>10.6%</u>
Caltrans Base Figure (B)	1.7%
<b>Adjusted Base Figure [(A+B)/2]</b>	<del>65.1%</del>

## 3) Other Available Evidence

Omnitrans is not in possession of other information that would have an impact on the DBE goal assessment.

# VI. PROPOSED OVERALL DBE GOAL

Since the Ninth Circuit Court of Appeals decision regarding Western States Paving v. Washington State Department of Transportation, Omnitrans has set race neutral goals. Omnitrans has implemented a Small Business Program and other race neutral methods that we believe will allow the Omnitrans to meet the DBE goal. We will monitor progress towards goal achievement and adjust as necessary.

If Omnitrans fails to reach its goal for two or more complete federal fiscal years, Omnitrans will re-evaluate its DBE program to determine whether contract goals are necessary to achieve the overall goal. If after re-evaluation Omnitrans believes a race-conscious program is necessary, as required by Western States, Omnitrans will gather evidence to determine if discrimination in the transportation contracting industry is present. Omnitrans will make a determination at that time what type of evidence gathering is appropriate, based on DOT regulations and case law.

**The Proposed Revised Overall DBE Goal for FFY 2019-2021 for Omnitrans FTA-assisted contracts is 65.1%.**

The DBE Goal based on the federal share is a Race Neutral goal and Omnitrans will implement race neutral measures to achieve this goal, as generally described in the following section. As a part of the prescribed goal-setting methodology, Omnitrans must project the percentage of its Proposed Overall DBE Goal that can be met utilizing race-neutral and race-conscious measures.

## Race-Conscious & Race-Neutral Projection

The United States Department of Transportation (USDOT) regulations require that race-neutral methods be used to the maximum extent feasible to reach the DBE overall goal. Due to the emphasis on race-neutral methods, Omnitrans will increase the use the race-neutral measures listed below. Omnitrans will carefully monitor participation during the course of the goal period. At the conclusion of each year during



the goal period, Omnitrans will re-evaluate the effectiveness of the race-neutral measures and determine if it is necessary to institute additional race-neutral measures to achieve the goal or if race-conscious methods should be considered.

Omnitrans intends to continue to use race-neutral methods to meet the overall DBE goal of 56.1% for FFY 2019-2021 in accordance with Title 49 CFR Part 26.51.

RACE-CONSCIOUS & RACE-NEUTRAL PROJECTIONS	
DBE Adjusted Base Figure	<u>56.1%</u>
Race-Neutral Component	<u>56.1%</u>
Race-Conscious Component	0.0%

## VII. RACE-NEUTRAL IMPLEMENTATION MEASURES

Omnitrans is currently implementing a number of race- and gender-neutral remedies. In order to outreach and promote the participation of DBEs and small businesses in the Omnitrans FTA-assisted contracting program and to increase the effectiveness of these remedies, Omnitrans plans to continue utilizing existing remedies and will continue to explore other options for consideration based on Omnitrans success in meeting its overall DBE goals based on these efforts.

Omnitrans will:

- Encourage DBE and other small business contracting community to register and receive solicitation notices through its on-line procurement website:  
<https://www.planetbids.com/portal/portal.cfm?CompanyID=18046>
- Host and participate in workshops for the DBE and small business contracting community. Omnitrans will attend and participate in vendor fairs hosted by unrepresented groups and other public agencies.
- Unbundle solicitations, provide pre-bid/pre-proposal conferences to afford networking opportunities for primes and subcontractors. Omnitrans will promote and encourage teaming opportunities between prospective prime contractors and the DBE and small business contracting community. Arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE and other small business participation.
- Structure solicitations to remove barriers such as the inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing).
- Solicit DBEs and other small businesses participation by carrying out information programs through use of advertisement and other communication methods on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists of bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate).

- Actively promote the small business conferences, programs, and support services offered by other agencies that have established DBE and other small business programs as a supportive service to help develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses. Omnitrans will also begin conducting “How to do Business with Omnitrans” and DBE workshops.
- Advise its contracting community of the online directory of certified DBEs, found at the California Unified Certification Program website: [www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm).
- Advise the contracting community of the available small businesses certified by the California Department of General Services (DGS) website: <http://www.dgs.ca.gov/pd/Programs/eprocure.aspx>.
- Advise the DBE and small business community to participate in Caltrans’ related bidding/proposal opportunities at <http://www.dot.ca.gov/hq/esc/oe/>. Omnitrans will also encourage DBEs and small businesses to seek the assistance and training through the U.S. Small Business Administration at [www.sba.gov](http://www.sba.gov).

### **Fostering Small Business Participation<sup>2</sup>**

Omnitrans has implemented several strategies to foster small business participation in its contracting process. These include the following:

- Conducting “How to do Business with Omnitrans” and DBE workshops.
- On larger prime contracts requiring the prime contractor to consider subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
- Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
- Ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.
- Provide outreach to current Omnitrans contractors or past Omnitrans contractors who may qualify for DBE-certification by encouraging them to seek and obtain DBE-certification.

## **VIII. PUBLIC PARTICIPATION AND FACILITATION**

In accordance with Public Participation Regulatory Requirements of Title 49 CFR Part 26, minority, women, local business associations, and community organizations within the Omnitrans market area will be consulted and provided an opportunity to review the triennial goal analysis and provide input.

Omnitrans will issue a Public Notice on the website announcing the Omnitrans Draft Proposed REVISED FTA Overall DBE Goal-Setting Methodology for FFY 2019-FFY 2021 (ATTACHMENT 1). The notice will inform the public that the proposed goal and rationale are available for inspection at the Omnitrans principal office during normal business hours and Omnitrans will accept comments until July 1929, 2019.

---

<sup>2</sup> See Title 49 CFR Part 26 Section 26.39 “Fostering Small Business Participation.”

OmniTrans will reach out to local minority, women, and community business organizations to provide them information on the OmniTrans DBE program and specifically the Draft Proposed REVISED FTA Overall DBE Goal-Setting Methodology for FFY 2019-2021. Each organization will be contacted and given an opportunity for a one-on-one meeting and to participate in the webinar. OmniTrans will host a webinar on July 9<sup>24</sup>, 2019 and present a brief overview of the DBE program and the REVISED goal and methodology for FFY 2019-21

A summary of all comments received, and efforts made to contact organizations will be listed.

## **ATTACHMENT 1: Website Notification**

**PENDING**

ITEM #           F5          

**DATE:** July 10, 2019

**TO:** Board Chair David Avila and Members of the Omnitrans Board of Directors

**THROUGH:** P. Scott Graham, CEO/General Manager

**FROM:** Eugenia F. Pinheiro, Contracts Manager

**SUBJECT: AUTHORIZE AWARD (BENCH) – CONTRACTS MNT19-46 (A-G)  
TRANSIT BUS PARTS**

### **FORM MOTION**

Authorize the CEO/General Manager to award Contracts MNT19-46 (A-G) as listed below for the provision of Transit Bus Parts for a two (2) year base period beginning October 3, 2019 and ending October 2, 2021, with the authority to exercise one (1) single option year tied to the Consumer Price Index (CPI), extending the contracts to no later than October 2, 2022, in an aggregate not-to-exceed amount of \$5,150,000, should all options be exercised.

List of Contracts for authorization:

Contract Number	Contractor*
MNT19-46A	American Moving Parts, LLC of Los Angeles, CA
MNT19-46B	CBM US, Inc. of Cambridge, MA
MNT19-46C	Dartco Transmission Sales & Service of Anaheim, CA
MNT19-46D	Kirk's Automotive, Inc. of Detroit, MI
MNT19-46E	Mohawk Mfg. & Supply Co. of Niles, IL
MNT19-46F	Muncie Reclamation and Supply Company dba Muncie Transit Supply of Muncie, IN
MNT19-46G	The Aftermarket Parts Company, LLC of Delaware, OH

\*Contractors are listed in alphabetical order.

### **BACKGROUND**

Omnitrans owns, operates, and maintains New Flyer buses for its revenue service. Parts delivered under this bench of contracts will be used in the repair and preventative maintenance of these vehicles.

On November 7, 2018, Omnitrans' Board of Directors authorized the release of Invitation for Bids IFB-MNT19-46. Notices were published in two local newspapers of general circulation, two (2) minority papers, and posted on Omnitrans' online bidding system. Twenty-one (21) bids were received by the March 26, 2019, deadline and fourteen (14) bids were deemed to be responsive.

Option year pricing will be adjusted using the change (increase or decrease) in accordance with the CPI. Award is being made to the lowest, responsive and responsible bidder for each part. When inventory is not available from the lowest bidder, Omnitrans reserves the right to order from the next lowest bidder, on an as needed basis, with no guarantee of usage. Pricing is deemed fair and reasonable based on competition.

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

### **FUNDING SOURCE**

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

Department	1200
Expenditure Code	504010

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

Short Range Transit Plan/Strategic Initiative Supported – This procurement supports Omnitrans' Short Range Transit Plan FY2015-2020 goal to expand, maintain and improve existing vehicles, facilities and passenger amenities.

### **CONCLUSION**

By proceeding with these bench awards, Omnitrans will have the ability to repair and maintain its fleet of buses.

PSG:EFP:KNT

ITEM #           G1          

**DATE:** July 10, 2019

**TO:** Board Chair David Avila and Members of the Omnitrans Board of Directors

**THROUGH:** P. Scott Graham, CEO/General Manager

**FROM:** Maurice A. Mansion

**SUBJECT: PUBLIC HEARING – FEDERAL TRANSIT ADMINISTRATION  
SECTION 5307, CONGESTION MITIGATION AIR QUALITY AND  
SECTION 5339 FUNDS**

### **FORM MOTION**

Close the public hearing concerning the Federal Transit Administration (FTA) §5307, §5310 and §5339 Funding for Fiscal Year 2020, to be held at 8:00 a.m., Wednesday, July 10, 2019, at the Omnitrans Metro Facility, 1700 West Fifth Street, San Bernardino, CA 92411.

### **SUMMARY**

The date and time were set with due notice for the federally required public hearing allowing comment on projects involving Federal assistance.

A public hearing affords the opportunity to obtain views of officials and citizens regarding the proposed use of Federal assistance and community support for the amended program of projects.

### **BACKGROUND**

To qualify for Federal assistance through the FTA, Omnitrans is required to hold a public hearing on the proposed use of Federal funds. FTA also requires that Omnitrans give the public sufficient notice, that any comments be incorporated into the grant application and that the notice include language which indicates that in the absence of substantive comments, Federal assistance will be sought.

The projects shown in the Public Hearing Notice (Attachment A) are included in the Fiscal Year 2020 budget and were approved at a previous Board of Director's meeting.

**FINANCIAL IMPACT**

All projects described are fiscally constrained and are contained in past-approved Omnitrans' budgets.

PSG:DW:MM

Attachment: A. Notice of Public Hearing



**NOTICE OF PUBLIC HEARING**

Fiscal Year 2020 Capital Projects  
Using §5307, §5310 and §5339

**NOTICE OF PUBLIC HEARING**

**OMNITRANS**, the regional mass transportation carrier in San Bernardino County, will hold a public hearing to obtain comments regarding the proposed Federal Transportation Administration grant applications for capital assistance for Fiscal Year 2020, which has been programmed for the following projects:

**CAPITAL PROJECTS – FY 2020**

<b>Project Description</b>	<b>Total Cost</b>	<b>Federal Share FTA 5307</b>
Capitalization of Tires	\$ 500,587	\$ 400,470
Capitalization of Leases	\$ 136,843	\$ 109,474
Capitalization of ACCESS Service Costs	\$ 1,396,376	\$ 698,188
Capitalization of Preventive Maintenance	\$ 15,533,068	\$ 15,533,068
Miscellaneous Projects	\$ 200,000	\$ 200,000
<b>Total</b>	<b>\$ 17,766,874</b>	<b>\$ 16,941,200</b>
		<b>FTA 5310</b>
Replacement of Revenue Vehicles	\$ 350,000	\$ 350,000
<b>Total</b>	<b>\$ 350,000</b>	<b>\$ 350,000</b>
		<b>FTA 5339</b>
Replacement of Revenue Vehicles	\$ 2,347,000	\$ 2,347,000
<b>Total</b>	<b>\$ 2,347,000</b>	<b>\$ 2,347,000</b>
<b>TOTAL FEDERAL SHARE</b>		<b>\$19,638,200</b>