



BOARD OF DIRECTORS MEETING
Wednesday, January 4, 2012 – 8:00 a.m.
Omnitrans Metro Facility
1700 West 5th Street
San Bernardino, CA 92411

SUPPLEMENTAL AGENDA

F. DISCUSSION ITEMS

13. Adopt Resolution #256-12 Authorizing Agreement with Morgan Stanley Smith Barney – Fuel Hedging Brokerage Services



DATE: January 4, 2012

TO: Board Chair Dick Riddell and Members of the Omnitrans Board of Directors

THROUGH: Milo Victoria, CEO/General Manager

FROM: Ernesto N. DeGuzman, Director of Procurement

SUBJECT: ADOPT RESOLUTION AUTHORIZING AGREEMENT WITH MORGAN STANLEY SMITH BARNEY – FUEL HEDGING BROKERAGE SERVICES

FORM MOTION

Adopt Resolution Number 256-12 authorizing the CEO/General Manager to enter into an agreement with Morgan Stanley Smith Barney for brokerage services for hedging fuel and authorizing staff to open a margin account, also at Smith Barney.

BACKGROUND

At the December 2011 meeting the Board authorized staff to enter into an Agreement with Morgan Stanley Smith Barney for provision of fuel hedging services for up to 150,000 gallons of LCNG per month and the opening of an associated margin account, also at Morgan Stanley. In subsequent communications, Morgan Stanley has indicated that for it to start the relationship with Omnitrans a Board Resolution specific to the business relationship is required.

CONCLUSION

For the above reasons, staff recommends that the Board adopt Resolution Number 256-12 authorizing the CEO/General Manager to enter into an agreement with Morgan Stanley Smith Barney for brokerage services for hedging fuel and authorizing staff to open a margin account, also at Smith Barney.

MV/ED

RESOLUTION NO. 256-12

A RESOLUTION OF THE OMNITRANS BOARD OF DIRECTORS, SAN BERNARDINO COUNTY, CALIFORNIA, AUTHORIZING AN AGREEMENT WITH MORGAN STANLEY SMITH BARNEY FOR FUEL HEDGING BROKERAGE SERVICES AND OPENING OF A MARGIN ACCOUNT

WHEREAS, Omnitrans is a Joint Powers Agency (the "Agency") formed under the California Government Code in March 1976 for the provision of public transit services in the Eastern San Bernardino Valley; and

WHEREAS, Omnitrans solicited competitive proposals for the provision of Liquefied Compressed Natural Gas (LCNG) and Brokerage Services for Hedging Fuel for 150,000 gallons of fuel per month; and

WHEREAS, in response to Omnitrans' solicitation for Brokerage Services for Hedging Fuel several brokerage firms submitted proposals; and

WHEREAS, after reviewing said proposals, staff determined that Morgan Stanley Smith Barney's proposal met the requirements of the Solicitation, reasonably priced, and offered the most advantageous terms to the Agency; and

WHEREAS, the Chief Executive Officer/General Manager has recommended that an Agreement with Morgan Stanley Smith Barney be entered into.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of Omnitrans hereby authorized the execution of an Agreement between Omnitrans and Morgan Stanley Smith Barney of Washington, DC, for brokerage services for transactions to be executed in the name of Omnitrans, and to open a margin account at Morgan Stanley Smith Barney.

BE IT FURTHER RESOLVED that these Resolutions are in accord with and pursuant to the Agency's underlying Joint Powers Agreement; and further

- (1) the Resolutions are in accord with all constitutional, statutory and regulatory provisions pertaining to the Agency;
- (2) the Agency is empowered to take the actions called for by the Resolutions;
- (3) the Agency is duly organized, validly existing and in good standing under all applicable state laws; and
- (4) the persons designated above as officers of the Agency have been duly installed and now hold the offices in the Agency set forth by their respective names and their true signatures.
- (5) the Agency is authorized and empowered to enter into an agreement with Morgan Stanley Smith Barney for brokerage services for transactions to be executed in the Agency's name, and to open a margin account at Morgan Stanley Smith Barney.
- (6) the Futures Account shall be a Cash Account or a Margin Account for the purpose of purchasing, investing in, or otherwise acquiring, selling (including short sales), possessing, transferring, exchanging, pledging, or otherwise disposing of, and generally dealing in any and all forms of securities and financial instruments of every kind or nature whatsoever, including, without limitation, purchasing, selling, etc., of option contracts (including uncovered option

contracts). All orders and instructions, written or oral, relating to the Securities Account shall be given by one of the individuals designated above under the heading "Authorized Individuals," and each of them individually is hereby authorized and directed to purchase and/or sell and/or deal in any and all securities and financial instruments for the Agency, including the power to deliver, accept delivery of, pledge, endorse, surrender and direct the transfer of record title of any assets beneficially owned by the Agency for any purpose, including to effect any exchange or conversion, or to deposit with any protective or similar committee, or otherwise, without obligation on Morgan Stanley Smith Barney's part to inquire into the reasons for said order or instructions.

(7) each of the Authorized Individuals is authorized and directed to bind and obligate the Agency to and for the carrying out of any contract, arrangement or transaction that shall be entered into by any such Authorized Individual for and on behalf of the Agency with or through Morgan Stanley Smith Barney; to execute and deliver to Morgan Stanley Smith Barney on behalf of the Agency any and all agreements, documents, contracts, releases and other writings that Morgan Stanley Smith Barney may require; to affix the corporate seal to any documents or agreements; and to agree to any terms or conditions to control the Securities Account.

(8) the Secretary (or other duly designated officer) of the Agency is hereby authorized, empowered and directed to certify, under the Seal of the Agency, or otherwise to Morgan Stanley Smith Barney:

(a) a true copy of these Resolutions;

(b) specimen signatures of each and every individual empowered by these Resolutions;

(c) a certificate (which, if Morgan Stanley Smith Barney requires, shall be supported by an opinion of the general counsel of the Agency, or other counsel satisfactory to Morgan Stanley Smith Barney) that the Agency is duly organized and existing, that its Joint Power Agreement empowers it to transact the business contemplated in these Resolutions, and that no limitation has been imposed upon such powers by constitution, statute, regulations, charter, bylaw or otherwise.

(9) Morgan Stanley Smith Barney may rely upon any certification given in accordance with these Resolutions as continuing fully effective unless and until Morgan Stanley Smith Barney shall receive due written notice of an amendment, modification or rescission of such Resolutions or certification. Further resolved that Morgan Stanley Smith Barney shall not be liable for any action taken or not taken upon instruction of any Authorized Individual prior to Morgan Stanley Smith Barney's actual receipt of written notice of the termination or impairment of such person's authority. The failure to supply any specimen signature shall not invalidate any transaction which is in accordance with authority actually granted. Further resolved that the Agency shall indemnify and hold harmless Morgan Stanley Smith Barney, Morgan Stanley & Co. Incorporated and any of their subsidiaries and affiliates from any and all claims that a transaction was unauthorized or outside the scope of the Agency's powers, if such transaction was authorized by any of the Authorized Individuals.

(10) the Agency hereby authorizes Morgan Stanley Smith Barney to charge any amount due Morgan Stanley Smith Barney under any arrangement with the Agency against any or all of the accounts and other property of the Agency held with Morgan Stanley Smith Barney or any of its affiliates, with the Agency remaining liable for any deficiency and each Authorized Individual is authorized and directed to pay to Morgan Stanley Smith Barney by checks and/or drafts drawn upon the funds of the Agency such sums as may be necessary to discharge the Agency's obligations to Morgan Stanley Smith Barney.

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Omnitrans Board of Directors, at their regular meeting held on the 4th day of January 2012, by the following vote to wit:

AYES:

NOES:

ABSENT:

Milo Victoria, CEO/General Manager
Secretary, Omnitrans Board of Directors

Dick Riddell, Chair
Omnitrans Board of Directors

Approved as to form:

Carol Greene
Legal Counsel for Omnitrans