

BOARD OF DIRECTORS MAY 6, 2020 SUPPLEMENTAL INFORMATION

ITEM #E15 BUS PAINT AND BODY REPAIRS

ITEM #F2 TRANSITMASTER AND FLEET OPERATION SYSTEMS

SOFTWARE LICENSE AND MAINTENANCE RENEWAL



CONTRACT AGREEMENT

between

CONTRACTOR	CONTRACT DOCUMENTS	
Paint Body Vinyl & Graphics, Inc. 15875 Santa Ana Ave.	CONTRACT NO. MNT20-33	
Fontana, CA 92337	BUS PAINT AND BODY REPAIRS	
(hereinafter "CONTRACTOR") Telephone: 909-434-1680 Email: stan@fleetrefinishing.com)))	
Remit Address))))	
And) Contract Amount: \$149,000.00)))))	
Omnitrans 1700 West Fifth Street San Bernardino, CA 92411 (hereinafter "OMNITRANS")	Omnitrans Project Manager: Name: Omar Bryant Title: Maintenance Manager Telephone: (909) 379-7482 Email: omar.bryant@omnitrans.org Contract Administrator: Name: Frank Holland Title: Sr. Contract Administrator Telephone: (909) 379-7186 Email: frank.holland@omnitrans.org	



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This Agreement is made and entered into as of this <u>1st</u> day of <u>May 2020</u>, by and between Omnitrans (hereinafter referred to as "OMNITRANS") and <u>Paint Body Vinyl & Graphics</u>, Inc. (hereinafter referred to as "CONTRACTOR").

RECITALS

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

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

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

1. SCOPE OF WORK

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

2. PERIOD OF PERFORMANCE

The term of this Agreement shall be from the date of execution of this Agreement and continue in effect through April 30, 2023, unless terminated as specified in Section 10 and 11 of this Agreement. Omnitrans has no obligation to purchase any specified amount of products/services. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

Omnitrans' election to extend the Agreement beyond the Initial Term shall not diminish its right to terminate the Agreement for Omnitrans' convenience or CONTRACTORS default as provided elsewhere in this Agreement.

3. CONTRACT OPTIONS

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

4. COMPENSATION

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

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed <u>One Hundred Forty Nine Thousand</u> Dollars (\$149,000.00), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

5. INVOICING AND PAYMENT

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

CONTRACTOR shall submit invoices in duplicate to:

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

Accountspayable@omnitrans.org Contracts@omnitrans.org A separate invoice shall be used for each shipment. Each invoice shall include, at minimum, the following information:

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

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

C. Prompt Payment Clause

Omnitrans has, by a contract clause pursuant to 49 CFR 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 the Prime Contractor to issue payment to all subcontractors for satisfactory work performed, no later than seven (7) days from Contractor's receipt of payment from Omnitrans. A provision will also apply to the disbursement of retention proceeds withheld by Prime Contractor, requiring the prompt return of retention payments from Contractor to the subcontractor no later than seven (7) days Omnitrans after the subcontractor's work is satisfactorily completed. Prime Contractor will incorporate these prompt payment provisions in all subcontract agreements issued by Prime Contractor with respect to this Contract.

In accordance with §26.29 "Prompt Payment Provisions", Omnitrans at its discretion, utilizes the following method to comply with the prompt payment of retainage requirement:

Hold retainage from the Prime Contractor and require a contract clause obligating Prime Contractor to make prompt and full payment of any retainage kept by Prime Contractor to the subcontractor within 7 days after the subcontractor's work is satisfactorily completed.

Failure to comply with these prompt payment provisions or delay in issuing payment without prior written approval from Omnitrans will constitute noncompliance, which will result in the application of appropriate administrative sanctions, including, but not limited to, a penalty of 1% of the amount due per month to the affected subcontractor for every month that payment is not made.

Contractor will not be reimbursed for work performed by subcontractors unless and until the contractor ensures that the subcontractors are promptly paid for the work performed. Contractor shall include a prompt payment clause that complies with local, state, and federal prompt payment requirements in all subcontracts entered into under this contract. Should contractor fail to meet subcontractor prompt payment requirements for two (2) consecutive subcontractor payments without good cause, OMNITRANS may impose appropriate penalties for failure to comply with prompt payment requirements.

D. TITLE

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

6. AUDIT AND INSPECTION OF RECORDS

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

7. NOTIFICATION

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

To OMNITRANS: To CONTRACTOR:

Omnitrans Paint Body Vinyl & Graphics, Inc.

1700 West Fifth Street 15875 Santa Ana Ave. San Bernardino, CA 92411 Fontana, CA 92337 Attn: Frank Holland Attn: Stanley Bard

Sr. Contracts Administrator President

8. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES

A. OMNITRANS' Project Manager

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

Project Manager: Omar Bryant, Maintenance Manager.

- a. Except as expressly specified in this Agreement, the Contracting Officer may exercise any powers, rights and/or privileges that have been lawfully delegated by OMNITRANS. Nothing in this Agreement should be construed to bind OMNITRANS for acts of its officers, employees, and/or agents that exceed the delegation of authority specified herein.
- b. The Contracting Officer has delegated to the Project Manager certain powers and duties in connection with this Agreement. The Project Manager is the authorized representative of the Contracting Officer for matters related to this Agreement. The Project Manager or his/her designee is empowered to:

- 1. Have general oversight of the Work and this Agreement, including the power to enforce compliance with this Agreement.
- 2. Reserve the right to remove any portion of the Work from CONTRACTOR which have not been performed to OMNITRANS' satisfaction.
- 3. Subject to the review and acceptance by OMNITRANS, negotiate with CONTRACTOR all adjustments pertaining to this Agreement for revision.
- c. In addition to the foregoing, the Project Manager shall have those rights and powers expressly set forth in other sections of this Agreement.

B. Contractor's Key Personnel

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

Name Role

Stanley Bard President

Randy Crossno Sales Manager

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

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

9. DISPUTE RESOLUTION

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

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

10. TERMINATION FOR CONVENIENCE

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

11. TERMINATION FOR BREACH OF AGREEMENT

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

- C. If CONTRACTOR violates Section 29, Compliance with Lobbying Policies, of this Agreement, then OMNITRANS may immediately terminate this Agreement.
- D. In the event OMNITRANS terminates this Agreement as provided in this Section, OMNITRANS may procure, upon such terms and in such manner as OMNITRANS may deem appropriate, work similar in scope and level of effort to those so terminated, and CONTRACTOR shall be liable to OMNITRANS for all of its costs and damages, including, but not limited, any excess costs for such Work.
- E. All finished or unfinished documents and materials produced or procured under this Agreement shall become OMNITRANS' property upon date of such termination.
- F. If, after notice of termination of this Agreement under the provisions of this Section, it is determined for any reason that CONTRACTOR was not in default under the provisions of this Section, or that the default was excusable under the terms of this Agreement, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 10, Termination for Convenience.
- G. The rights and remedies of OMNITRANS provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

12. ASSIGNMENT

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

13. SUBCONTRACTING

- A. OMNITRANS hereby consents to CONTRACTOR's subcontracting of portions of the Work to the parties identified below for the functions described in CONTRACTOR's proposal. CONTRACTOR shall include in each subcontract agreement the stipulation that CONTRACTOR, not OMNITRANS, is solely responsible for payment to the subcontractor for all amounts owing and that the subcontractor shall have no claim, and shall take no action against OMNITRANS, Member Agencies or officers, directors, employees or sureties thereof for nonpayment by CONTRACTOR.
- B. CONTRACTOR shall not, without the express written consent of Omnitrans, either:

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

Subcontractor's Name and Address	License #	Work to Be Performed
N/A		

C. CONTRACTOR shall report subcontractor awards and payments via a Web-based system on a monthly basis unless Omnitrans approves in writing the use of a Subcontractors Paid Report and Payment Verification form.

14. INDEPENDENT CONTRACTOR

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

15. INSURANCE

A. INSURANCE REQUIREMENTS

- 1) General Requirements for Contractor
 - a. Without limiting or diminishing the Contractor's obligation to indemnify or hold Omnitrans harmless, Contractor shall procure, prior to commencement of the services required under this contract and maintain for the duration of the contract at its own expense, insurance of the kinds and in the amounts as indicated below:

b. Provide Omnitrans with valid original certificates of insurance and endorsements showing Omnitrans as an additional insured.

2) Deductibles or Self-Insured Retention (SIR)

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

3) Other Insurance Provisions

a. Commercial General Liability and Automobile Liability

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury covering claims which may arise from or out of Contractor's performance of its obligations hereunder and if Contractor's vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then Contractor shall maintain liability insurance for all owned, non-owned or hired vehicles so used. Policy shall name Omnitrans, its officers, officials, employees, agents and volunteers as additional insured as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations of the scope of protection afforded Omnitrans, its officers, officials, employees, agents, and volunteers.

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

b. Workers' Compensation

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

c. Care, Custody, and Control

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

4) Acceptability of Insurers

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

5) Verification of Coverage

- a. Contractor shall furnish Omnitrans with original endorsements affecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All insurance certificates and endorsements are to be received and approved by Omnitrans before work commences.
- b. As an alternative, Contractor's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.
- c. In lieu of purchasing insurance and providing original endorsements and or certificates of insurance, the Contractor may provide proof of self-insurance; such proof must be to the satisfaction of Omnitrans.

6) Subcontractors

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

7) Notification of Terminated Insurance

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

B. MINIMUM INSURANCE COVERAGE

If the Contractor maintains broader coverage and/or higher limits than the minimum requirements shown below, Omnitrans requires and shall the Contractor. 1) Commercial General Liability including Products/Completed **Operations:** \$1,000,000; per occurrence for bodily and property damage liability and \$2,000,000 aggregate; Omnitrans named and endorsed as an Additional Insured. 2) Automobile Liability: \$1,000,000; per occurrence for bodily and property damage liability and aggregate; Omnitrans named and endorsed as an Additional Insured. 3) Errors and Omissions Liability: \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$ 3,000,000 aggregate or, Professional Liability: \$1,000,000; 4) per occurrence and aggregate. 5) Workers' Compensation: statutory limits or, ☐ Garagekeeper's Liability: \$1,000,000 per occurrence. 6) 7) Employer's Liability: \$1,000,000; per occurrence. 8) Environmental Liability: \$1,000,000; per occurrence and aggregate; Omnitrans named and endorsed as an Additional Insured. 9) **Umbrella Policy:** \$4,000,000; per occurrence and aggregate Additional coverage for the above policies, Omnitrans Additional Insured. 10) Hazardous Materials Endorsement: All drivers making deliveries of products specified on this solicitation shall have Hazardous Materials Endorsements on their Commercial Drivers License, and such other Endorsements as may be required by relevant laws and/or regulations. 11) Builders Risk Insurance: Contractor shall maintain in force, at its own expense, Builder's Risk insurance on all risks of direct physical loss basis, excluding damage caused by an act of God, pursuant to California Public Contract Code §7105, for an amount equal to the full completed value of the covered structure or replacement value of alterations or additions. The policy shall include Omnitrans, Contractor and its subcontractors as loss payee as their interest may appear. Omnitrans shall not be responsible for the theft of any materials, equipment in the possession and control of Contractor. 12) Installation Floater Insurance: Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Agreement, a Builder's Risk Installation Floater for coverage of

be entitled to the broader coverage and/or higher limits maintained by

Contractor's labor, materials and equipment to be used for completion of the work performed under this Agreement. The minimum amount of coverage to be carried shall be equal to the full amount of the Contractor's labor, equipment, materials, or fixtures to be installed, in transit, or stored off-site or on-site during the performance of this Agreement. The policy shall include as loss payee, Omnitrans, the Contractor, and its sub-contractors as their interest may appear. Omnitrans shall not be responsible for the theft of any materials, equipment in the possession and control of Contractor.

16. INDEMNITY

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

17. REVISIONS IN SCOPE OF WORK

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

18. RIGHTS IN TECHNICAL DATA

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

material is subject to the prior written approval of OMNITRANS. The provisions of this paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.

19. OWNERSHIP OF REPORTS AND DOCUMENTS

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

20. OWNERSHIP RIGHTS

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

21. WORK FOR HIRE

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

22. SUBMITTAL OF CLAIMS BY CONTRACTOR

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

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

23. EQUAL OPPORTUNITY

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

24. STANDARD OF PERFORMANCE

- A. CONTRACTOR shall perform and exercise, and require its subcontractors to perform and exercise due professional care and competence in the performance of the Work in accordance with the requirements of this Agreement. CONTRACTOR shall be responsible for the professional quality, technical accuracy, completeness and coordination of the Work, it being understood that OMNITRANS will be relying upon such professional quality, accuracy, completeness and coordination in utilizing the Work. The foregoing obligations and standards shall constitute the "Standard of Performance" for purposes of this Agreement. The provisions of this paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.
- B. All workers shall have sufficient skill and experience to perform the Work assigned to them. OMNITRANS shall have the right, at its sole discretion,

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

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

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

26. DISQUALIFYING POLITICAL CONTRIBUTIONS

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

27. COMPLIANCE WITH LAW

- A. CONTRACTOR shall familiarize itself with and perform the Work required under this Agreement in conformity with requirements and standards of OMNITRANS, municipal and public agencies, public and private utilities, special districts, and railroad agencies whose facilities and work may be affected by Work under this Agreement. CONTRACTOR shall also comply with all Federal, state and local laws and ordinances.
- B. Government regulations that directly affect the CONTRACTOR'S performance of this contract and unforeseen impacts, which neither party could have contemplated at the onset of the contract and have an unconscionable impact on the CONTRACTOR may be given special pricing consideration. The parties, in good faith, shall review established rates and may adopt any mutually agreed new rates, which shall only be effective as agreed upon by the

parties. Thorough documentation including all cost elements is required to support the Contractor's claim to any relief under this clause.

28. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

This project is subject to Title 49, Code of Federal Regulations (CFR), Part 26. entitled "Participation by Disadvantaged Business Enterprises (DBE) in Department of Transportation Financial Assistance Programs ("Regulations"). The Regulations in their entirety are incorporated herein by this reference. Omnitrans has established a Race Neutral Federal Transportation Administration (FTA) DBE program, which is also incorporated by reference. It is the policy of Omnitrans to ensure non-discrimination in the award and administration of all contracts and to create a level playing field on which DBEs can compete fairly for contracts and subcontracts. Omnitrans highly encourages the participation of DBE contractors and the utilization of DBE subcontractors in this project. There is no contract DBE goal on this project, however, Omnitrans has an overall agency DBE goal of 6.1% and any DBEs on this project will be used to satisfy the overall agency DBE goal. CONTRACTOR must comply with DBE regulations (49 CFR, Part 26) in the execution of this contract. Key DBE provisions have been included in Attachment B - DBE Requirements, and include assurance of nondiscrimination, prompt payment, and reporting requirements.

29. COMPLIANCE WITH LOBBYING POLICIES

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

30. PUBLIC RECORDS ACT

- A. All records, documents, drawings, plans, specifications and other material relating to conduct of OMNITRANS' business, including materials submitted by CONTRACTOR in its proposal and during the course of performing the Work under this Agreement, shall become the exclusive property of OMNITRANS and may be deemed public records. Said materials may be subject to the provisions of the California Public Records Act. OMNITRANS' use and disclosure of its records are governed by this Act.
- B. OMNITRANS will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records

Act, including interpretations of the Act or the definitions of trade secret, confidential or proprietary. OMNITRANS will accept materials clearly and prominently labeled "TRADE SECRET" or "CONFIDENTIAL" or "PROPRIETARY" as determined by CONTRACTOR. OMNITRANS will endeavor to notify CONTRACTOR of any request of the disclosure of such materials. Under no circumstances, however, will OMNITRANS be liable or responsible for the disclosure of any labeled materials whether the disclosure is required by law or a court order or occurs through inadvertence, mistake or negligence on the part of OMNITRANS or its officers, employees and/or contractors.

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

31. WAIVER/INVALIDITY

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

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

32. FORCE MAJEURE

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

33. CONFIDENTIALITY

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

entity, either by statement, deposition, or as a witness, except upon direct prior written authority of OMNITRANS.

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

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

35. GOVERNING LAW

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

36. MODIFICATIONS TO AGREEMENT

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

37. LICENSING, PERMITS AND INSPECTION COSTS

A. The CONTRACTOR warrants that it has all necessary licenses and permits required by the laws of the United States, State of California, and the County of San Bernardino, the Local Jurisdictions, and all other appropriate

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

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

38. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, and any and all of its Amendments, Appendices, Exhibits and Attachments; (2) provisions of RFQ-MNT20-33 and any and all of its Addenda, Appendices, Exhibits and Attachments; and (3) CONTRACTOR's proposal dated February 17, 2020 and its Appendices, Exhibits, and Attachments.

39. ENTIRE AGREEMENT

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

OMNITRANS

PAINT BODY VINYL & GRAPHICS, INC.

Erin Rogers
Interim CEO/General Manager

Stan Bard
President

Date

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed

on the date shown below, and effective on the date first hereinabove written.

Federal Tax I.D. No. <u>33-0595841</u>

DP

Date

I. General

Omnitrans operates a bus fleet of approximately 180 buses that may require body repair and painting due to accidents. Omnitrans' transit fleet currently consists of New Flyer buses that are 40 and 60 feet in length. The buses manufacture years range from 2001 through 2019. Additional buses may be added or removed during the contract term. A contractor capable of performing minor and major body repairs is required to restore buses that have been damaged due to accidents.

Year	Туре
2001-2019	New Flyer 40' CNG Bus
2012-2018	New Flyer 60' CNG Bus

Omnitrans operates bus service at the following locations:

Bus Location	Address
East Valley	1700 W. Fifth Street
	San Bernardino, CA 92411
West Valley	4748 Arrow Highway
	Montclair, CA 91763-128

II. Warranty

Contractor shall warrant all parts and labor for one (1) year after the date of acceptance of repair work by Omnitrans.

III. <u>Time Frame</u>

From the date of receipt of the bus, each repair must be completed, and the vehicle returned to Omnitrans within two (2) calendar weeks unless agreed upon with Omnitrans Maintenance Manager or designee. If repairs are extensive and cannot be accomplished in the designated time agreed upon, the Maintenance Manager or designee shall be notified immediately of the anticipated completion date by the project manager assigned by the Contractor.

IV. Project Requirements

A. Contractor shall provide all necessary personnel, materials, and sub-contractors to complete these major body repairs. All work must be performed at the Contractor's facility. If the bus is not drivable, Omnitrans or Contractor will transport the bus via landoll tow to the Contractor's repair site(s). The Contractor's main repair facility must be capable of storing and repairing 40 and 60-foot buses indoors if necessary.

- B. Contractor shall repair and/or replace metal, fiberglass, rubber and composite body components, and shall be able to straighten the frame of the bus in conjunction with the necessary work, which may also include wheel alignment.
- C. Contractor shall provide a written estimate (within 48 hours of being notified) stating in detail the work to be completed including:
 - cost of labor (for each segment of work)
 - cost of labor (total hours)
 - parts required (itemized)
 - materials to be used (itemized)
 - applicable taxes
 - time frame for repair
- D. Mechanical repairs technicians must be capable and certified for restoring the mechanical functioning items, such as electrical components, transmission, engine, and suspension and provide a separate charge for these types of skilled labor repairs.
- E. In the event body parts and/or components can be either repaired or replaced, the lesser of the two costs shall be used.
- F. The written estimate shall not be construed as an authorization to proceed with work. The Omnitrans' Maintenance Manager or designee must authorize the submitted written estimate in writing. This authorization will be given to the Contractor within 48 hours after receipt of the estimate.
- G. Upon completion of all authorized work, vehicles will be inspected by Omnitrans for thoroughness and quality of the work. The inspection will be performed by the Omnitrans Maintenance Manager or designee from the bus' location of origin. In the event the work performed is found to be incomplete, substandard or unacceptable, payment shall be withheld until such work is found to be acceptable.

V. BUS INFORMATION

- A. All buses included within the scope of work of this contract are compressed natural gas (CNG) powered buses equipped with roof mounted tanks, with a total fuel capacity of up to 23,000 square cubic feet at 3600 pounds per square inch (PSI).
- B. All buses included in this scope of work are equipped with on-board fire suppression and methane detection systems. In the presence of sparks, flames or other sources of ignition, e.g., welding equipment, etc., the fire-suppressing agent, 25 pounds of Purple K, will be discharged in less than one second after detection.
- C. Contractor shall ensure that all sources of ignition, open flames or other heat sources are not used on or near the buses.

- D. In addition, the on-board fuel system consists of roof-mounted CNG fuel tanks. Each CNG tank is equipped with a fuel pressure relief device designed to operate, based on temperature, and they are all rated to 219 degrees Fahrenheit, 104 degrees Celsius.
- E. Contractor shall not attempt to operate, change, or otherwise manipulate any of the CNG controls or equipment. In case of an emergency with the fueling system, the Contractor shall call the fire department immediately.
- F. Contractor shall adhere to special precautions when working around and storing these CNG powered buses. The Contractor's facility shall be equipped to accommodate CNG powered buses and shall comply with all applicable rules and regulations at the time of the award.
- G. There shall be no smoking or open flames within 50 yards of these buses.
- H. Contractor shall be responsible for vehicle pick-up, delivery, and storage when requested. All work will be performed at the Contractor's facility.
- I. Contractor assumes all liabilities and risks associated with vehicle pick-up, delivery and storage, proper licensing and insurance for drivers and companies used to drive and/or transfer, to and from Omnitrans, properties. Omnitrans may transport nondrivable buses to Contractor's location on an as-needed basis, at Omnitrans' expense.
- J. Contractor shall present valid proof to Omnitrans that all operators of vehicles have a valid California Driver's License permitting them to transport these buses.
- K. Contractor must comply with requirements regarding labor practices and safety procedures. The Contractor shall comply with all Occupational Safety and Health Administration (OSHA), Environmental Protection Agency (EPA), Division of Occupational Safety and Health (Cal/OSHA), California Environmental Protection Agency (Cal/EPA) regulations, including training and regulatory requirements for the city.
- L. Omnitrans shall perform announced and unannounced inspections to the Contractor facility to verify the stages of completion, quality of work performed, status of repairs and others as applicable to this project.
- M. Contractor may be required to supply and install decal packages. All logos and striping installations must meet Omnitrans' standards.
- N. Contractor shall be responsible for working with Original Equipment Manufacturers or approved equal providers when requested for decals and the original paint providers (or approved equal) to make certain the coating has been allowed proper drying time prior to any decal installation.

O. Resources for paint and decals:

3M Products Axalta

New Flyer of America
2880 Jurupa St.

Axalta of North America
Santa Barbara, California

Ontario, CA 91761 (800)-441-7515

(909) 591-6304

P. Paint Palettes:

Primer – Grey

Red-Pantone 187C

Silver –Pantone Pro VOC –LE AP 0.9

Blue – Pantone 286C

Blue - Pantone 660C

Green – Pantone – 369C

White - Axalta 830652 EF L0007

Clear coat - Chromax Pro LE600S

- Q. Decal artwork will be provided by Omnitrans to the Contractor in Adobe Illustrator Encapsulated Postscript files (EPS) format, with an Adobe Acrobat PDF formatted file for reference if necessary. Omnitrans may choose to provide decals.
- R. Omnitrans will present the color palette of all colors to the Contractor and the Contractor will be required to obtain a signed approval from Omnitrans; Maintenance Manager of matching palettes prior to proceeding with the painting tasks.

VI. Acceptance Criteria

A. Paint Appearance

The following appearance attributes are unacceptable:

- Orange peel (rough or wavy appearance)
- Pitting (small holes in the surface coating)
- Ragged mask lines (two-tone mask lines)
- Sags/Runs/Drips (flow of coating which forms film thickness)
- Thin coating (coating is thinner than specified)
- Paint chips
- Mottled or blotchy (non-uniform)

VII. General Health, Safety, Security and Environmental Requirements

A. Contractor, its subcontractors, suppliers, and employees have the obligation to comply with all Omnitrans health, safety, security and environmental compliance

requirements and bus yard safety rules, as well as all federal, state, and local regulations pertaining to scope of work or agreements with Omnitrans.

- B. Contractor shall specifically acknowledge that it has primary responsibility to prevent and correct all health, safety, security and environmental hazards for which it and its employees, or its subcontractors (and their employees) are responsible. The Contractor shall further acknowledge their expertise in recognition and prevention of hazards in the operations for which they are responsible, that Omnitrans may not have such expertise, and is relying upon the Contractor for such expertise. Omnitrans Project and Safety Manager retains the right to notify the Contractor of potential hazards and request the Contractor to evaluate and, as necessary, to eliminate those hazards.
- C. Contractor shall provide all necessary tools, equipment, and related safety protective devices to execute the scope of work in compliance with the Omnitrans' Health Safety and Security requirements, CCR Title 8 Standards, and recognized safe work practices.
- D. Contractor shall instruct all its employees, and all associated sub-contractors under contract with the Contractor who works on Omnitrans projects in the following: recognition, identification, and avoidance of unsafe acts and/or conditions applicable to its work.

Attachment B REGULATORY REQUIREMENT Table of Contents

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REGULATORY REQUIREMENTS

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

RR-01

NO FEDERAL OBLIGATION TO THIRD PARTIES *

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

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

A. Civil Fraud.

The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to the Recipient's activities in connection with the Project. By executing the Grant Agreement or Cooperative Agreement for the Project, the Recipient certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the Recipient the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.

B. Criminal Fraud.

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

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

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RR-03

ACCESS TO THIRD PARTY CONTRACT RECORDS *

A. Access to Third Party Contract Records.

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

Contractor agrees to provide Omnitrans, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or the FTA's authorized representatives, including any FTA Project Management Oversight Contractor, access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a) 1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

- B. If this Contract is for a capital project or improvement (defined at 49 U.S.C. 5302(a) 1) and was entered in to through other than competitive bidding, the Contractor shall make records related to this Contract available to Omnitrans, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- C. Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until Omnitrans, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

RR-04

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

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

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- Omnitrans requests which would cause Omnitrans to be in violation of the FTA terms and conditions.
- B. Federal Transit Administration of the US Department of Transportation and all laws, regulations, guidelines, and provisions of the financial assistance agreement apply to this Contract and are incorporated by reference as if fully set forth herein.
- C. Contractor shall at all times comply with all applicable federal laws and regulations, including without limitation FTA regulations, policies, procedures and directives, including those listed directly or by reference in Applicable Grant Agreements between Omnitrans and FTA, as they may be amended or promulgated from time to time during the term of this Contract collectively "Federal Requirements". These Federal Requirements may change and the changed Federal Requirements will apply to this Contract as required unless the Federal Government determines otherwise. Contractor's failure to so comply with the Federal Requirements shall constitute a material breach of this Contract.

RR-05 CIVIL RIGHTS REQUIREMENTS (TITLE VI, ADA, EEO (EXCEPT SPECIAL DOL CONSTRUCTION CLAUSE)) *

A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Contractor shall comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity

Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil (a) Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, Contractor shall comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of the Contract. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor shall comply with any implementing requirements FTA may issue.

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- (b) Age In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, Contractor shall refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor shall comply with any implementing requirements FTA may issue.
- (c) Disabilities In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Contractor shall comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, Contractor shall comply with any implementing requirements FTA may issue.
- (d) Contractor shall include these requirements in each subcontract, modified only if necessary, to identify parties, as required by Federal regulations.

RR-06 DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26

- A. This contract is subject to Title 49, Code of Federal Regulations (CFR), Part 26, entitled "Participation by Disadvantaged Business Enterprises (DBE) in Department of Transportation Financial Assistance Programs ("Regulations"). The Regulations in their entirety are incorporated herein by this reference. Omnitrans has established a Race Neutral Federal Transportation Administration (FTA) DBE program It is the policy of Omnitrans to ensure non-discrimination in the award and administration of all contracts and to create a level playing field on which DBEs can compete fairly for contracts and subcontracts. Omnitrans highly encourages the participation of DBE contractors and the utilization of DBE subcontractors in this project. There is no contract DBE goal on this project, however, Omnitrans has an overall agency DBE goal of 6.1% and any DBEs on this project will be used to satisfy the overall agency DBE goal. CONTRACTOR must comply with DBE regulations (49 CFR Part 26) in the execution of this contract. Key DBE provisions have been included in Attachment G DBE Requirements, and include assurance of nondiscrimination, prompt payment, and reporting requirements.
- B. Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Contract. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Omnitrans deems appropriate. Each subcontract Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- C. Contractor shall report subcontractor awards and payments via a Web-based system on a monthly basis unless Omnitrans approves in writing the use of a Subcontractors Paid Report and Payment Verification form.

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

RR-07 TERMINATION 49 U.S.C. Part 18 FTA Circular 4220.1F

Applicability to Contracts

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

Flow Down

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

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

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

RR – Page 6 Updated: 12202019 preclude Omnitrans from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

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

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

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

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RR-08 SUSPENSION AND DEBARMENT*

- A. This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, Contractor shall verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.
 - Contractor shall comply with 49 CFR 29, Subpart C and shall include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.
- B. By entering into this Contract, Contractor certifies that it shall comply with the requirements of 49 CFR 29, Subpart C throughout the period of this Contract. This certification is a material representation of fact relied upon by Omnitrans. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to remedies available to Omnitrans, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

RR-09 COMPLIANCE WITH FEDERAL LOBBYING POLICY *

The Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, requires that Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying," attached hereto as the certification entitled, "Certification of Compliance with Federal Lobbying Requirements." As set forth in the certifications, each tier of subcontractors shall certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures shall be forwarded from tier to tier up to Omnitrans.

RR-010

CLEAN WATER AND CLEAN AIR REQUIREMENTS*

A. CLEAN WATER REQUIREMENTS

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

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B. CLEAN AIR

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

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

RR-011

NON-CONSTRUCTION ACTIVITIES

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

RR-012

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

Applicability to Contracts

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

Flow Down

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

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

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

RR – Page 9 Updated: 12202019 **Claims for Damages** - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

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

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

RR-013 ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM *

A. Applicability

This Article applies to federally funded contracts for transit operations.

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

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

C. Drug and Alcohol Testing Program

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

RR – Page 10 Updated: 12202019 List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

D. Alcohol and Drug Free Workplace Program

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

RR-014

SPECIAL NOTIFICATION REQUIREMENTS FOR STATES

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

RR-015

ENERGY CONSERVATION REQUIREMENTS

- A. Applicability
 - This Article applies to all federally funded contracts.
- B. Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 USC §6321 et seq.

RR-016

RECYCLED PRODUCTS

A. Applicability

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

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

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RR-017

NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS

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

RR-018 ADA ACCESS

A. **Applicability**

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

B. Access Requirements for Persons with Disabilities

Contractor shall comply with:

- 1. The requirements of 49 U.S.C. § 5301(d), which states the Federal policy that elderly persons and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy;
- 2. All applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps;
- 3. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act;
- 4. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act; and
- 5. All applicable requirements of the following regulations and any subsequent amendments thereto:
 - (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

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

RR-019 ADMINISTRATIVE CODE *

A. **Applicability**

This Article applies to all contracts.

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

RR – Page 13 Updated: 12202019 Contractor shall comply with all applicable provisions of §§1090 et. seq. and §§87100 et. seq. of the California Government Code. Without reducing or affecting its obligation to comply with any and all of said provisions, Contractor specifically covenants:

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

C. Campaign Contributions

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

RR-020 DISCRIMINATION *

A. Applicability

This Article applies to all contracts.

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

RR-021

WHISTLEBLOWER REQUIREMENTS *

A. Applicability

This Article applies to all contracts.

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

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RR-022 PUBLIC RECORDS ACT *

A. Applicability

This Article applies to all contracts.

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

RR-023

PRIVACY ACT - 5 U.S.C. 552

Applicability to Contracts

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

Flow Down

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

Model Clause/Language

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

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

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

RR – Page 15 Updated: 12202019 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

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

END OF REGULATORY REQUIREMENTS

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ATTACHMENT C - PRICING MNT20-33 BUS PAINT AND BODY REPAIRS

	Description	Price
1	Paint & Body Repair Rate Per Hour	\$70.00
2	Mechanical Repairs Rate Per Hour	\$70.00
3	Towing	\$245.00



POLICY **707** PAGE 1 OF 6

SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS BOARD OF DIRECTORS

DATE: June 7, 2017

I. Purpose

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

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

II. Scope

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

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

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

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

III. Procedure

A. COMMUNICATION OF POLICY

- (a) Each employee of the Agency shall receive a copy of this policy at the time of his/her hire and shall sign a copy of the acknowledgment. Employees who were employed before the effective date of this policy shall also receive a copy of this policy and shall sign a copy of the acknowledgment. A copy of the signed acknowledgment and of all new and revised policies throughout the employee's employment shall be maintained in each employee's personnel file.
- (b) A copy of this policy shall be attached to each contractor's contract, and shall become a part of its contract. The contractor shall be responsible for communicating this policy to its employees and any subcontractors to which the contractor sublets any portion of its contract.



POLICY 707 PAGE 2 OF 6

SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS BOARD OF DIRECTORS

DATE: June 7, 2017

B. PROHIBITED CONDUCT

- (a) The transportation of firearms or weapons in Agency vehicles is prohibited. This includes but is not limited to:
 - (1) to and from work,
 - (2) when conducting Agency business,
 - (3) at all times in Agency-owned or leased vehicles.
- (b) The possession or carrying of permitted and non-permitted firearms or weapons while at Agency buildings, parking lots, sponsored events, and job sites.
- (c) Exception: Power actuated tools which are manufactured for the use of fastening building materials and sanctioned tools for the purpose of performing Agency job duties are not subject to this policy.

C. SEARCH

- (a) Omnitrans reserves the right to conduct reasonable, unannounced searches of Agency premises and personal searches of employees and others while entering, on, or leaving Agency premises, including, but not limited to, personal effects, vehicles, lockers, desks, tool boxes, clothing, meal containers, and baggage. Searches will be conducted when the Agency has a reasonable suspicion to believe that a particular employee may be in possession of a weapon or firearm.
- (b) "Reasonable suspicion" is defined as a suspicion that is based on specific personal observations such as an employee's manner, disposition, behavior, speech, information provided to management by an employee, by law enforcement officials, by a security service, or by other persons believed to be reliable, or a suspicion that is based on other surrounding circumstances.
- (c) Individuals refusing to allow an inspection will not be detained or forced to submit to the inspection. Refusal violates Agency policy and constitutes an act of insubordination constituting disciplinary action, up to and including separation of the employment relationship. Non-employees who refuse to allow an inspection will not be permitted on Agency premises and will be required to immediately leave the premises. Employees will be relieved of all duties while pending investigation.

D. <u>DISCIPLINE</u>

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



POLICY **707** PAGE 3 OF 6

SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS BOARD OF DIRECTORS

DATE: June 7, 2017

up to and including separation of employment.

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

E. REPORT OF VIOLATIONS

1. Employee Violations

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

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

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

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

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

2. Visitor Violations

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



POLICY 707 PAGE 4 OF 6

SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS BOARD OF DIRECTORS

DATE: June 7, 2017

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

F. FALSE REPORTS

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

G. ROLES AND RESPONSIBILITIES

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

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

H. SAFETY FIRST

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

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

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

I. ANTI-RETALIATION PROVISION

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



POLICY 707 PAGE 5 OF 6

SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS BOARD OF DIRECTORS

DATE: June 7, 2017

J. DEFINITIONS

 Firearm or weapon includes, but is not limited to: A weapon, a pistol or rifle, whether loaded or unloaded, capable of firing a projectile and using an explosive as a propellant.

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



POLICY **707** PAGE 6 OF 6

SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS BOARD OF DIRECTORS

DATE: June 7, 2017

- 5. **Search**: To examine in order to find something concealed.
- 6. **Job sites**: Any and all locations where the agency conducts business.

SIGNS

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

ATTACHMENT A

SCHEDULE OF COVERED SOFTWARE & EQUIPMENT

SOFTWARE

The following Software modules and workstations are released and installed as part of the San Bernardino (OMNI) TransitMasterTM system.

Table 1 – Covered Software Modules and Workstations

Description

BASE TRANSITMASTER FIXED ROUTE CONTROL CENTER SOFTWARE

TMRouter, TMCalc, TMLogger, TMWorkAssignments, TMOpsCommSvr, TMTracker

GIS AND SURVEY TOOLS

FIXED ROUTE AND PARATRANSIT SCHEDULING SYSTEM INTERFACE
TMRouteManager application including the data import wizard

BASE TRANSITMASTER COMMUNICATIONS SOFTWARE

Multi-Channel Controller (MCC) software which interfaces with the method used by the vehicles for data

INFO SERVER SOFTWARE

DataMart

ROSTERING SYSTEM INTERFACE

TRANSITMASTER RADIO NETWORK CONTROLLER (RNC) SOFTWARE

STANDARD AVL AND COMMUNICATION MOBILE SOFTWARE FOR VEHICLES, INCLUDING:

- (191) FIXED ROUTE VEHICLES
- (19) NON-REVENUE VEHICLES (12 Supervisor and 7 Maintenance)

SUPPORT FOR TRANSITMASTER WORKSTATIONS (up to 5)

Includes: BusOps, AVL Map (integrated into BusOps) and Playback. Mobile Dispatch, System admin; TMConfig, Security Manager, IDS Config, MCC Viewer (data radio only) Client Monitor, Incident Manager, Vehicle Assignments and TMPlanner. And any other TransitMaster applications not defined.

APC CONTROL SOFTWARE

LOUD AND CLEAR MOBILE SOFTWARE

Integrated with the onboard mobile software

ANNUNCIATOR STUDIO

Software Maintenance Program Pricing includes:

- Software modules and workstations as noted in Table 1. Workstation support assumes the number of workstations supported is already licensed.
- 24 x 7 Remote priority 1 technical support via the Trapeze Customer Care Service Desk.
- 8 am to 8 pm EST business day technical support for lower priority issues via the Trapeze Customer Care Service Desk
- Central system and mobile vehicle system software support.
- Licensed software interface support (in-vehicle interfaces are included; central system interfaces may be separately priced).
- Software license for software updates and upgrades.
- One (1) Client Engineer visits for one (1) week each to consult, diagnose, repair, etc. annually has been provided. To include the following training;

8 Hours of TM Software Installation

- a. (2 hours) Administration / Configuration of server side software For IT
- b. (2 hour) TM FTP Usage / How to use TM Route Manager and Troubleshoot
- c. (4 Hours) How to use Survey tool for Field Supervisors. (Split into 2 2 hour sessions)

8 Hours of On Bus Hardware training

- a. Installation / Confiuration / Troubleshooting / Card programming
- b. APC Tunning and troubleshooting
- c. Single Sign On between IVLU + Headway Sign and IVLU and Farebox
- Two (2) annual User Conference general session registrations per year have been provided. Expenses
 are the responsibility of San Bernardino.
- Monthly Web training session invitations.
- On-line tracking ability for queued service tickets.
- One (1) SOFTWARE UPGRADE Service to be provided during the 3 year base term of this agreement.
 Statement of Work to be provided by Trapeze before upgrade services commence.

EQUIPMENT

The following equipment covered by this Agreement includes all sub-assemblies except mobile radios. The part numbers are the master part numbers from which all serialized sub-components are referenced.

Table 2 - Covered Equipment and Quantities

Description	Qty	Base/ Option	
Touch Mobile Data Terminal (MDT)	213	Base	
Integrated Vehicle Logic Unit (VI IVLU)	213	Base	

Equipment Maintenance Program Pricing includes:

- Equipment and quantities as noted in Table 2.
- Return Material Authorization (RMA) coordination with Buyer's staff.
- Thirty (30) calendar day repair turn around time from receipt at Trapeze facility to Buyer's facility.
- On-line tracking capability for queued repairs.
- Repair at the Trapeze facility.

ATTACHMENT B

PRICING & PAYMENT SCHEDULE

Omnitrans				
		ANNUAL PRICE		
		YEAR 1	YEAR 2	YEAR 3
Item Description	Quantity	Base	Base	Base
		Maintenance	Maintenance	Maintenance
		7/2020-6/2021	7/2021-6/2022	7/2022-6/2023
Chandred CM Comment TransitMarker Fined Danks Valida	404			
Standard SW Support - TransitMaster Fixed Route Vehicle	191			
Standard SW Support - Non-Revenue Vehicle	19			
Standard SW Support - BIAB SOFTWARE MAINTENANCE - BASE	3	199,575	209,658	219.93
		I		
Standard HW Support - Fixed Route xVLU/MDT (IVLU or newer)	191			
Standard HW Support - Non-Revenue xVLU/MDT (IVLU or newer)	19			
Standard HW Support - Bus In A Box	3	İ		
Standard HW Support - RNC	2			
HARDWARE MAINTENANCE - BASE		58,329	61,213	64,10
UPGRADE SERVICES (one (1) upgrade over the 3 year base		ı		
period)	5			
PROFESSIONAL SERVICES - BASE		45,000	47,250	49,61
MANAGEMENT DISCOUNT - MULTI-YEAR AGREEMENT				
DISCOUNTS - BASE		(15,145)	(15,906)	(16,68
TOTAL ANNUAL MAINTENANCE AGREEMENT		287,759	302,215	316,97

Coverage term:

• The coverage term will span July 1st, 2020 to June 30, 2023.

Invoicing:

- Invoicing occurs annually, typically 90-days in advance of the coverage term anniversary date
- Additional charges **may apply** more frequent billing (PLUS 1.5% quarterly).
- Coverage is not in effect until payment is received by Trapeze.
- Lapses in coverage are subject to additional charges to bring coverage current.

Optional Time & Materials ("T&M") Services:

- Customers with an active support agreement are eligible to request repair for hardware equipment not
 specifically covered under the maintenance agreement. T&M services may be initiated by 1) sending a
 Purchase Order to Trapeze for T&M repairs, and 2), requesting material return using the Return Material
 Authorization ("RMA") process, as described in Exhibit c.
- T&M services shall be directly invoiced upon completion of the work.
- After the diagnosis and testing is complete and a problem has been found, a quote for repair will be sent to the Buyer.
 - Buyer has fourteen (14) calendar days to respond to Trapeze with Buyer's desire to repair, or have Trapeze return the unit to the Buyer unrepaired.
 - If the Buyer chooses to not repair the unit, or if the Buyer exceeds the fourteen (14) calendar days without responding to Trapeze request for disposition on the unit, the unit will be returned to the Buyer. Time and Material rates and minimum fees shall apply.
- Equipment returned for repair determined by Trapeze to be No Trouble Found ("NTF") or No Fault Found ("NFF") is subject to the Time and Material rates and minimum fees.

Time & Materials Rate Schedule		
Bench Fee	\$275 minimum	
Diagnosis and Testing	\$200.00/hour (1 hour minimum)	
Equipment Repair Rates	\$200.00/hour plus Parts & Shipping	

Other Optional Program Pricing includes:

- On-site Field Service Engineer is \$1,500 per day plus travel expenses.
- On-site Project Engineer is \$1,750 per day plus travel expenses.
- On-site Training is \$1,750 per day plus travel expenses.
- Deployment Services are \$1,750 per day, plus any applicable travel expenses
- Additional TransitMaster[™] workstation license \$8,500; additional annual TransitMaster[™] workstation software maintenance support \$1,750.
- The above daily labor rates are the standard rates at the time of writing this agreement, and are subject to change without notice.



ATTACHMENT C

RETURN MATERIAL AUTHORIZATION ("RMA") PROCESS

All items returned to Seller must have the following information presented prior to the issuing of a Return Material Authorization ("RMA") number. The reason for return (as specific as possible), the item(s) part number(s), serial number and Buyer contact. For vehicle installed equipment please provide the vehicle id, vehicle make/model and vehicle year.

Buyers who have equipment needing repair, having received Trapeze approval for the repair shall follow the procedure outlined below:

Buyer (or authorized representative) has equipment needing repair.

Buyer (or authorized representative) provides to Seller: Part Number, Serial Number, and Detailed Problem Description with Unit by logging onto www.MyTrapeze.com and selecting "Request an RMA" on the left side. You will need to enter the following information:

- a) Serial number
- b) corresponding problem description for each device being returned
- c) return shipping address
- d) billing address

A complete and accurate description of the condition or problem of the component or unit and the initial trouble shooting shall be done by the Buyer (or authorized representative).

The Buyer (or authorized representative) shall ship the unit and CRG (Customer Returned Goods) form to:

Trapeze Software Group 5265 Rockwell Dr NE Cedar Rapids, IA 52402 Attention: RMA Department 1-877-411-8727

Packing

- Buyer (or authorized representative) places all equipment (EXCEPT IVLU's) in a nonstatic bag along with a copy of RMA form. IVLU's shall be sent in an ESD static sensitive bag. Seller will provide non-static bags at Buyer's request. Buyer shall place a copy of the CRG Form, which shall be provided by Seller at the time of the RMA request, inside the box or taped to the outside of the bag of the unit being returned. Buyer (or authorized representative) shall pack all returned units carefully, using packing peanuts and bubble wrap when necessary. All returns are Buyer property and must be protected during shipping and through the entire return process.
- Use the values on the commercial invoice for entering the 'Value for Customs' on shipping forms (for International shipments)
- Do not enter a 'Total Declared Value for Carriage'. (For International shipments)
- Mark the RMA number on the top of the outside boxes.
- Attach one copy of the commercial invoice to each box (for international shipments)
- Attach the waybill.

Please note:

- Trapeze will provide proper packaging at a nominal fee if the units are not sent to us in original packaging or if the packaging is damaged.
- Buyer is responsible for shipping to and from Trapeze on all non-warranty/non-maintenance repairs and per the agreement on warranty/maintenance repairs.
- If the quantity or serial numbers are not filled out correctly on the commercial invoice, customs may hold the shipment, or the shipment may be refused.

If you have any questions, please contact our Customer Care Department (cc@trapezegroup.com).

ATTACHMENT D

TRANSITMASTER™ UPGRADE STATEMENT OF WORK

General Description of Project:

This Statement of Work ("SOW") describes tasks to be performed by Trapeze Software Group, Inc. (Trapeze) for the TransitMaster™ ("TM") Fixed Side (Dispatch) software upgrade for the Omnitrans TM system. Tasks involve the backup of the existing TM software version and associated databases, the installation of the upgraded TM software, the upgrade of individual dispatch workstations and operational state verification of the upgraded TM software.

Trapeze's Responsibilities:

Trapeze will coordinate with OMNITRANS to ensure the accessibility to the dispatch center and all server rooms, towers, garages and associated facilities as is necessary until project completion. Trapeze will provide one (1) project engineer to be on-site for up to but not to exceed four (4) days for customer testing and cut over and provide up to but not exceed three (3) days for new feature training.

Trapeze will provide one (1) trainer to be on-site for up to but not exceed three (3) days of on-site training as described in the Training section.

Trapeze shall have the authority over the installation of all equipment and systems. All communications regarding the upgrade, approval of work and workmanship should flow through Trapeze representatives on-site.

Omnitrans Responsibilities:

OMNITRANS will be required to provide Trapeze access to all workplaces necessary to perform all installation of the required TM software. The necessary requirements OMNITRANS must deploy to meet all mandatory obligations follows (if applicable):

- Access to a secure and locked storage facility available for access by Trapeze personnel. This would only
 be required if hardware is involved as part of the upgrade. If the upgrade is software only, then a locked
 storage facility would not be needed.
- Parking access near the installation area for a service vehicle for the transport of personnel, materials and tools by Trapeze.
- Identification badges for all Trapeze personnel working at each installation site.
- Authorized personnel to coordinate and support acceptance testing with Trapeze personnel.
- Remote dial in VPN connection required for factory technician support.
- Provisioning of virtual machines in existing VMware environment for production and testing systems.
- Affected Software:
 - Base TransitMaster™ control center software
 - GIS and survey tools
 - Fixed route scheduling system interface
 - Base TransitMaster™ communications software including TDMA communications subsystem
 - Datamart™

O Any other TransitMaster™ licensed interfaces

Licensing

 The current license count from the original contract and any purchased changes prior to the upgrade will apply to the upgraded TransitMaster™ software system.

Operating System

- The TransitMaster™ software version will be upgraded to version requested.
 - Note: Minimum operating system and SQL Server version requirements are subject to change with newer versions of TransitMaster™. Trapeze will notify OMNITRANS of any changes to the minimum requirements during the planning phase of future upgrades. It is the responsibility of OMNITRANS to upgrade the operating systems prior to the TransitMaster™ software upgrade.
 - Note: It is expected that operating system upgrades and SQL Server upgrades will be coordinated between Trapeze and OMNITRANS as part of the upgrade schedule.

Software Upgrade high level Phases:

Notice to proceed (NTP) & Operational overview

Discuss and define upgrade schedule and review client's TransitMaster™ ITS operations in terms of Network, Vehicle, and System features (fixed and any non-revenue applications if needed). This phase will be with customer involvement.

Deployment Testing

Create testing environment within the Trapeze ITS deployment lab that simulates the client's ITS environment. Obtain current backup of client's TransitMaster™ databases and convert to upgrade version. This phase is an internal check of client's ITS system to validate upgrade stability and integration to existing software and hardware interfaces.

On-Site Work Plan and actual upgrade

These activities involve transition from the production databases to the new converted upgrade system version. Many critical activities are completed during this phase:

- Transition server data (database conversion) to new version, including Application and DataMart servers
- Mobile software preparation and vehicle configuration
- Signup import & merge
- Create & stage Route files
- Replication set-up (if applicable)
- Upgrade dispatch workstations for both fixed route and non-revenue (if needed)
- Validate FTP service
- Validate functionality

Validate error logs

A detailed plan will be delivered to client for approval and consideration of client resources needed to carry out these upgrade activities, as well as operational expectations during on-site work.

Post upgrade support

The objective on this final phase is to continue validating upgrade activities and assure system stability and functionality over time. Some of the activities addressed are new feature training activities, issues resolution, and general support.

Project Management Work Plan:

Trapeze shall provide project management support for the duration of this project phase. The Trapeze project manager will be responsible for ensuring that project requirements are communicated and understood and milestones are met. The project manager will be the key point of contact for OMNITRANS during the project. We request that OMNITRANS also assign a project manager. The two project managers will work together to ensure that regular dialogue is maintained through an established channel.

The Trapeze project manager shall provide the following key services:

- Scope Management. The project manager is the link between the client's requirements, the contract/agreement, the deliverable specifications and the project's scope of work. The project manager is critical to defining and documenting the tasks and deliverables necessary to complete the project. The project manager ensures that the project's resources remain focused on the project objectives.
- Integration Management. While subject matter experts may be brought onto the project for specific purposes, the project manager understands the project as a whole and ensures that project deliverables are achieved in the right sequence and at the right time. The master project schedule is an output of Integration Management.
- Communication Management. The project manager is essential to the effective flow of information throughout the project. As the accumulator, archiver and librarian of the project records, the project manager is also responsible for ensuring that information is distributed to the appropriate individuals in a timely manner. Examples of communication management include issue lists, weekly progress reporting, scheduled weekly teleconferences, and contract administration.
- Resource Management. The project manager ensures that the most appropriate Trapeze resources are allocated to the project at the correct time. The Trapeze project manager also specifies what kinds of project resources are required from the client and when they are needed.

Project Plan Delivery:

The Trapeze Transit System Specialist is responsible for managing scope, cost, schedule, communications, human resources, integration, risk, quality, change orders and procurement. This approach has proven to be successful when managing complex ITS System deployments.

Trapeze understands project success is measured by the thorough integration into the existing OMNITRANS ITS system and that success can only be realized with a sound management approach and business style from Trapeze. Trapeze tailors an implementation solution to meet the customer's specific needs as presented in this delivery proposal. Communication with the right decision makers and receiving accurate and consistent feedback will promote success and customer satisfaction with this implementation objective. The following strategic overview provides a description of the phases for this project.

Project Delivery meets Project Standards:

Already in the Project Management overview we have described a number of quality assurance processes that proactively and positively assist ensuring that the project remains soundly managed and on schedule.

The Project Management overview includes a detailed description of the Project Standard that we follow. One of the key aspects of this model is the quality gate process which, for critical phases, ensures the phase is not only completed but that all the relevant quality processes and documentation has been produced and approved for each of the following project phases:

Project Phases:

Project phases and quality assurance are jointly accomplished through project processes and documentation. Following are the critical phases to the vehicle hardware and system software upgrades:

- Project Initiation & System Surveys
- System Installation & Deployment
- Availability Test and Project Closure

Project Initiation & System Review

Upon award and notice to proceed (NTP), Trapeze will work with your project team to accomplish a number of necessary elements required immediately after NTP.

Initially Trapeze produces the project plan and detailed project schedule. These will be in review with OMNITRANS during the kickof. Project teams from both Trapeze and OMNITRANS should attend the project kick off meeting. A project kickoff meeting will be held so that the technical experts from each side can commence the design activities.

Trapeze core team staff will work together with OMNITRANS core team to complete and approve the project plan and detailed project schedule. The key planning assumptions need to be discussed and agreed. These include the following:

- Work Plan and Schedule
- Proposed Cutover-Phasing Plan for the fixed side system elements
- Network review, operational review particularly back office applications and their integration with the existing ITS system.

Trapeze's network and project engineering personnel schedule onsite visits to perform surveys, preferably during the Kick-Off meeting. The review process will provide OMNITRANS staff and Trapeze engineering personnel the opportunity to review required infrastructure design supporting the new system. The Trapeze team will work with OMNITRANS at each stage of the project to confirm all members of OMNITRANS team are given the opportunity to fully participate in the decision making process.

System Installation and Deployment

System Integration Test phase shall be conducted using approved vehicles on the OMNITRANS network. Trapeze suggests a field performance test on a pilot fleet of vehicles. This pilot shall test all operational and performance parameters of the system, and shall be conducted for a set, mutually agreed upon time span.

The pilot test demonstrates complete system functionality – with the implementation of the upgraded system in a production environment. The test confirms system operation by checking all of the required functions and features of TransitMaster™ and all *applicable* integrated Trapeze back office applications. Trapeze and OMNITRANS will mutually agree on the pilot test plan and procedures. The existing, mutually understood, onsite ITS system infrastructure shall be used for the operational pilot, checking all of the functions and requirements of the software. Trapeze will complete the pilot test after successful completion and acceptance of the system design.

Availability Test and Project Closure

During this phase of the project, OMNITRANS - with Trapeze personnel support - exercise the TransitMaster™ ITS system for a period of days and note system performance. It is the responsibility of Trapeze to support when requested, and resolve quickly any issues that may occur during this period. It is understood at this time, Trapeze Customer Care will transition to providing ongoing system and application support according to existing maintenance and warranty programs with OMNITRANS.

Following successful completion of the availability test, final documentation is prepared and delivered. OMNITRANS will be responsible for reviewing the documentation. Once the documentation is reviewed and approved, Trapeze will present the project phase closure letter to OMNITRANS for signature.

Training

It is important that your system administrator and maintenance staff be trained and familiar with the new equipment and application features installed and the functionality they provides. Training shall be conducted so that OMNITRANS staff is well equipped to troubleshoot and maintain the new system after integration into production.

Major areas of instruction will include:

- System configuration and operational review
- Network configuration
- TransitMaster ™ TIS Manager and central system configuration

Therefore, Trapeze shall provide scheduled training for the infrastructure and ITS system just prior to, and concurrent, with commissioning of new vehicle hardware. This priority will allow OMNITRANS organization staff an amount of time to become familiar with the system and at the same time put this knowledge to immediate use. Using this method, the learning experience of your support staff can be closely timed with the implementation of the system.

This course introduces the student to the advanced tools and topics related to the TransitMaster[™] Intelligent Transportation System (ITS). The focus of this course is to provide the student with information on the day-to-day maintenance and monitoring of the system, with an in-depth study of the applications used to perform those tasks.

General Objectives:

- Review and gain an advanced understanding of the TransitMaster™ applications and services that are used to configure, maintain, and troubleshoot the system.
- Use the appropriate applications to monitor and maintain the TransitMaster™ radio and computer network.
- Use the appropriate software applications to monitor and maintain the data stored in the TransitMaster™ database

Format: Combination of classroom lecture, discussion, and hands-on exercises

Duration: 3 Days

Training sessions start at 8:00 AM and end at 5:00 PM each day unless other arrangements are made with the instructor. One-half hour preparation and tear-down time is required by instructor and is included as part of the training session.

Prerequisites:

- Completion of TM601: System Administration I or equivalent experience
- Working knowledge of computer and Windows TM Operating Systems
- Working knowledge of computer networks and communication methods
- Working knowledge of schedule and route data

Who should attend:

- Computer Network Administrators, System Administrators, Database Analysts, Schedulers

Student Capacity: 1-2 students per computer workstation

- Recommended maximum is 6 students

Trapeze Software Group, Inc. ("Seller" or "Trapeze") hereby agrees to furnish TransitMaster™ System Equipment and Software maintenance service and other named maintenance services consisting of the necessary parts, labor, and testing of all Omnitrans ("Buyer" or "OMNI" or "San Bernardino") Buyer-owned Equipment and licensed Software listed in Attachment A in accordance with the terms and conditions of this Equipment and Software Maintenance Agreement ("Agreement"). Buyer agrees to use Seller as the maintenance vendor for all Equipment and Software listed. Buyer agrees to purchase and pay for such services subject to the following terms and conditions:

WHEREAS Buyer wishes to participate in Seller's annual maintenance program;

WHEREAS Seller is the owner of the rights to certain software identified under Attachment A (Collectively "Software"), including copyright, trademark, trade secret and other intellectual property rights;

WHEREAS Seller has granted Buyer certain rights regarding the Software that enable Buyer to use the Software under the terms and conditions specified under the granted license; and

WHEREAS, The Equipment and Software covered by this Agreement are identified in Attachment A, Schedule of Covered Equipment and Software, and pricing for this coverage is identified in Attachment B, Pricing Schedule.

NOW, THEREFORE, the parties agree as follows:

1) DEFINITIONS.

- A. Rogue Unit: Equipment that exhibits a recurring problem subject to the following:
 - The undesired symptom reported is the same for three (3) sequential removals, and
 - The undesired interval is seven (7) operating days or less.
- B. <u>Turnaround Time</u>: Commences on the date of receipt by Seller's Service Center, and continues to the date of shipment back to Buyer.
- C. No Fault Found ("NFF") / No Trouble Found ("NTF"): Equipment which requires no repair, replacement or adjustment by Seller in order to return it to a serviceable level in accordance with Article 8, NO FAULT FOUND ("NFF") / NO TROUBLE FOUND ("NTF") EQUIPMENT RETURNS.
- D. <u>Updates and Upgrades:</u> Those improvements to the Equipment or Software that Seller generally makes available as part of the annual maintenance program.
- E. <u>Priority One (1) Variance:</u> An Equipment or Software performance anomaly resulting in the loss or use of critical system functions to the extent that such loss affects the safety of the public and/or personnel.
- F. Priority Two (2) Variance: An Equipment or Software deficiency of lesser severity than a Priority One (1) that does not substantially reduce the capability of the system to accomplish its primary system functions (e.g., vehicle communications and AVL). Priority Two (2) Variances indicate functional and/or performance deficiencies, but the system is still capable of accomplishing its primary system functions with a satisfactory degree of safety and effectiveness. A Priority One (1) Variance for which an acceptable workaround has been established shall be reassigned to a Priority Two (2).
- G. <u>Service Notification:</u> A notification or bulletin provided by Seller that describes a change to Equipment or Software.

- H. Trade Secrets: Any information proprietary to either party (including software source code), concerning a design, process, procedure, formula, or improvement that is commercially valuable and secret (in the sense that the confidentiality of such information affords a competitive advantage to the owner), but shall not include any information that (1) is or becomes generally known to the public through no fault of the recipient; (2) is obtained without restriction from an independent source having a bona fide right to use and disclose such information, without restriction as to further use or disclosure; (3) the recipient independently develops through persons who have not had access to such information; or (4) the disclosing party approves for unrestricted release by written authorization.
- Trapeze Equipment ("Equipment"): The Trapeze proprietary equipment units identified in Attachment A of this Agreement.
- J. <u>Trapeze Software ("Software"):</u> The Trapeze proprietary software applications identified in Attachment A of this Agreement.

<u>2) MAINTENANCE SERVICES PROVIDED.</u> Seller agrees to provide the following Equipment and Software maintenance services during the term of this Agreement:

- A. Seller shall maintain the Equipment and Software in conformity, and in all material respects, with the descriptions and specifications of the Equipment and Software in effect at the time of this Agreement;
- Seller shall send Buyer mailings regarding Updates and Upgrades of the Equipment and Software;
- C. Seller shall provide phone support to Buyer's authorized callers to assist with troubleshooting of installation, configuration, and operational problems of covered Equipment and Software.

The toll free number for all calls to Seller is 1-877-411-8727.

Buyer shall provide Seller with remote access to Buyer's computers on which the Software is installed. Seller shall provide Updates and Upgrades to the Software via remote connection or at its sole discretion, load the software onto the system while on site. All media used to load software on-site shall remain in the possession and control of Seller. Should the Buyer request any on-site maintenance services, Seller reserves the right to charge its standard applicable service fees plus expenses related to such services.

Seller does not represent or warrant that (a) the Equipment or Software shall meet any or all of Buyer's particular requirements; (b) the operation of the Equipment or Software shall be error-free or uninterrupted.

3) TERM OF THIS AGREEMENT. The term of this Agreement shall commence on July 1, 2020, and shall continue through June 30,

2023, unless (1) this Agreement is cancelled in accordance with Article 18 CANCELLATION; or (2) if Buyer elects to exercise renewal option(s) pursuant to Article 4 OPTION TO RENEW, then, in that event, upon expiration of the term of renewal.

- <u>4) OPTION TO RENEW.</u> If an Option to Renew for additional periods is provided for in Attachment B, Buyer must exercise the option to renew prior to expiration of this Agreement. If more than one (1) option to renew is contained in Attachment B, Buyer must exercise any subsequent option to renew prior to the expiration of the then current option.
- 5) PAYMENT AND PRICING TERMS. Buyer shall pay Seller on a "firm fixed price" basis, in US dollars, in accordance with the Maintenance Plan Fees, attached to and, by this reference, incorporated into this Agreement. Terms of payment shall be net thirty (30) days from date of invoice. If Buyer determines that an invoice does not comply with the terms of this Agreement, Buyer shall notify Seller in writing, via certified mail, within seven (7) business days of receipt of invoice. Buyer shall pay all undisputed portions of the invoices submitted by Seller within the payment terms stated herein.

In the event Buyer declines, for any reason, to pay any invoice(s) when due, in addition to any other rights reserved hereunder, Seller reserves the right to suspend or limit performance until all past due sums are paid. In addition, Seller reserves the right to assess a monthly fee of two percent (2%) of the open balance payable to Seller by Buyer. Buyer understands and agrees that the two percent (2%) fee constitutes an administrative cost rather than a penalty.

Time and Material rates are subject to change without notice and are set forth under Attachment B. Time and Material rates shall apply to any repair services for any Equipment covered under Article 8, NO FAULT FOUND / NO TROUBLE FOUND EQUIPMENT RETURNS, and any Equipment and Software covered under Article 7, EQUIPMENT AND SOFTWARE EXCLUDED FROM MAINTENANCE SERVICE COVERAGE.

Seller shall invoice Buyer at the address set forth below for services provided hereunder.

Invoice address:

Omnitrans Attn: Alex Chen - I.T. Director 1700 W Fifth Street San Bernardino, CA, 92411

<u>6) TAXES AND FEES.</u> Except as otherwise specified, the prices stated do not include any state, federal or local sales or excise taxes, customs, or duties, now in force or which may be enacted in the future, and may be applicable to the sale, delivery or use of goods. Buyer shall provide tax exemption certificate if Buyer is tax exempt.

- 7) EQUIPMENT AND SOFTWARE EXCLUDED FROM MAINTENANCE SERVICE COVERAGE. In the event that Equipment and Software covered under this Agreement is subjected to any of the conditions below by Buyer or any Third Parties, such Equipment and Software shall be excluded from maintenance service coverage.
 - Equipment or Software subjected to carelessness or negligence;
 - Equipment or Software subjected to cannibalization or vandalism;

- Equipment or Software subjected to alteration or repair in a manner which conflicts with Seller's written repair procedures, specifications, and license terms;
- D. Equipment or Software subjected to inadequate packing, storage or handling;
- E. Equipment or Software subjected to fire, wind, flood, leakage, collapse, lightning, explosion, or other Acts of God, including but not limited to acts of war (declared or undeclared), terrorism, or the public enemy; and
- F. Software altered as a result of Third Party service bulletins.

The parties further agree that the above maintenance services shall not include services which may be required to identify or correct errors, defects or performance issues in the Trapeze Software or the Trapeze Equipment which are caused by the actions or omissions of the Buyer, its employees, contractors or vehicle riders.

- 8) NO FAULT FOUND ("NFF") / NO TROUBLE FOUND ("NTF") EQUIPMENT RETURNS. Equipment returned for repair under this Agreement and subsequently determined by Seller to be NTF or NFF is subject to the Time and Material pricing contained in Attachment B.
- 9) ROGUE UNIT. Seller shall apply special testing and repair to any Rogue Unit at no additional charge to Buyer. Any special testing and repair shall not be subject to Article 13, TURN AROUND TIME ON EQUIPMENT RETURNS.
- 10) EQUIPMENT RETURNS. Buyer shall send all Equipment covered by this Agreement directly to the designated Seller Service Center outlined in the Return Materials Authorization ("RMA") Request Process, Attachment C. Upon repair, Seller shall return the Equipment to Buyer's designated receiving facility, or other locations as designated by Buyer's applicable Return Order. Cost of shipping to the designated Seller Service Center shall be borne by Buyer. Cost of shipping the repaired Equipment to the Buyer's facilities shall be borne by Seller unless the Equipment is deemed NFF / NTF.
- <u>11) EQUIPMENT PARTS SUBSTITUTION.</u> Seller reserves the right to substitute functionally equivalent parts for those parts returned to Seller for repair.
- 12) REPAIR / DIAGNOSIS DOCUMENTATION. Prior to delivery to Seller of Equipment to be repaired, Buyer shall provide Seller with Buyer's normal return order, which shall include the following information:
 - A. Date of performance anomaly;
 - B. Vehicle Number;
 - C. Detailed system description of performance anomaly;
 - D. Type number, part number, and serial number of the Equipment;
 - E. Buyer Return / Repair Order Number; and,
 - F. Ship To address and Contact Name for return of Equipment to Buyer.
- 13) TURNAROUND TIME ON EQUIPMENT RETURNS. Seller shall provide a Turnaround Time of thirty (30) calendar days for Equipment listed in Attachment A which is returned to Seller in accordance with Attachment C.
- 14) DOCUMENTATION OF SOFTWARE DIFFICULTY. Upon the identification of a possible fault or difficulty within any of the

Software to be supported hereunder, Buyer shall promptly issue a trouble report to Seller that shall include the following information:

- Date of performance anomaly;
- Software module in question and location of where Software is installed;
- C. Detailed system description of performance anomaly;
- Part number or version number of Software and severity/ impact to Buyers operations; and
- E. Contact name and phone number.

The trouble report information shall also be communicated verbally to Seller at 1-866-778-5572. Seller shall forward the trouble report to the designated repair technician.

15) CHANGES TO EQUIPMENT AND SOFTWARE. Seller may issue Service Notifications indicating recommended or mandatory changes to the Equipment and Software covered under this Agreement.

16) CHANGES TO AGREEMENT. Seller and Buyer may, by mutual agreement and subsequent written amendment, make changes to this Agreement. Implementation of any change not covered under this Agreement shall be chargeable in accordance with Seller's current pricing. In addition, Buyer shall be entitled to acquire a license to new products at Seller's then current license fees. Upgrades and new products will be provided with updated documentation where available and appropriate.

17) LIMITATION OF LIABILITY. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITIATION, DAMAGES FOR LOSS OF PROFITS, OR BUSINESS INTERRUPTION) ARISING OUT OF THE USE OF OR INABILITY TO USE ANY PRODUCT, EQUIPMENT OR ASSOCIATED SOFTWARE DESCRIBED HEREIN, EITHER SEPARATELY OR IN COMBINATION WITH ANY OTHER PRODUCT, EQUIPMENT, SOFTWARE OR OTHER MATERIALS EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OR CERTAINTY OF SUCH DAMAGES.

SELLER'S TOTAL AGGREGATE LIABILITY HEREUNDER WHETHER BASED UPON CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, SHALL IN NO EVENT EXCEED ONE HUNDRED FORTY-THREE THOUSAND, EIGHT HUNDRED SEVENTY-NINE DOLLARS AND FIFTY CENTS US (\$143,879.50).

18) CANCELLATION. Seller and Buyer may cancel this Agreement in whole or in part by providing ninety (90) calendar days written notice to the other party for any of the following reasons: (i) For any occurrence described under Article 21, FORCE MAJEURE, (ii) for material breach by the other party which remains uncured for sixty (60) calendar days following a written notice of the breach and a demand for cure of the breach by the non-breaching party, or (iii) convenience. During the ninety (90) calendar day notice period, the applicable maintenance fees will remain payable.

Cancellation or early termination of the initially agreed upon multi-year agreement shall result in waiving of the Seller's "Management Discount" as described in the Pricing & Payment Schedule, Attachment B. In the event of early termination, Buyer shall be invoiced for the annual amount(s) of the "Management Discount" applied from the beginning of the agreement, prorated up to the time of early termination.

Upon cancellation of this Agreement by either party, Buyer shall return all of Seller's assets within thirty (30) calendar days of the effective date of cancellation, and Seller shall return all of Buyer's assets within thirty

(30) calendar days of the effective date of cancellation. In the event assets are not returned within the specified timeframe, the value of the items not received shall be assessed, invoiced to the non-compliant party and paid in full within thirty (30) days from the date of invoice.

<u>19) NOTICES.</u> Notices under this Agreement shall be sufficient if sent by U.S. certified mail, postage prepaid or by an air courier service, prepaid as follows:

To: Trapeze Software Group, Inc.

Attn: Heidi Wiebold 5265 Rockwell Drive, NE Cedar Rapids, IA 52402 Tel: 319-743-4522

Fax: 319-743-4522

Email:heidi.wiebold@trapezegroup.com

To: Omnitrans

Attn: Alex Chen - I.T. Director 1700 W Fifth Street San Bernardino, CA 92411

Tel: 909-379-7123 Fax: 909-379-2323

Email: Jacob.harms@omnitrans.org

20) PATENT, PROPRIETARY RIGHTS, COPYRIGHT AND TRADEMARK INDEMNITY. Seller shall retain all rights in patents, copyrights, trademarks, and trade secrets. Furthermore, neither this Agreement nor the delivery of any work hereunder shall be construed as granting, either by estoppel or otherwise, any right in, or license under, any present or future data, drawings, plans, ideas or methods disclosed in this Agreement or under any invention, patent, copyright or trade secret now or hereafter owned or controlled by Seller. Software utilized under this Agreement is proprietary and ownership of the software remains with Seller and/or its subcontractors, as the case may be. Buyer agrees to: (1) take reasonable steps to maintain Seller's and subcontractors rights in the software; (2) not sell, transfer, publish, display, disclose, or make available the software, or copies of the software, to third parties except where Buyer may disclose the software to designated federal representatives under a nondisclosure agreement executed by both parties, (3) not use or allow to be used, the software either directly or indirectly for the benefit of any other person or entity, and (4) not use the software, along with its Updates, patches or Upgrades, on any equipment other than the equipment on which it was originally installed, without Seller's written consent.

Seller agrees that it will defend, at its own expense, all suits against Buyer for infringement of any United States patent or copyright which covers, or alleges to cover, the product described herein in the form sold by Seller. Seller agrees that it will pay all sums, which, by final judgment or decree in any such suits, may be assessed against Buyer on account of such infringement, provided that Seller shall be given (i) immediate written notice of all claims of any such infringement and of any suits brought or threatened against Buyer and (ii) authority to assume the sole defense thereof through its own counsel and to compromise or settle any suits so far as this may be done without prejudice of the right of Buyer to continue the use, as contemplated, of the product so purchased. If, in any such suit so defended, the product is held to constitute an infringement and its use is enjoined, or if in the light of any claim of infringement Seller deems it advisable to do so, Seller

may either procure the right to continue the use of the same for Buyer, or replace the same with a non-infringing product, or modify said product so as to be non-infringing, or, if the foregoing options are not reasonably available, take back the infringing product and refund the purchase price less a reasonable allowance for use, damage or obsolescence.

THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF THE PARTIES HERETO FOR PATENT AND/OR COPYRIGHT INFRINGEMENT.

21) FORCE MAJEURE. Seller shall not be liable to Buyer for failure to meet any obligations under this Agreement if such failure is caused by or due to events beyond the control of Seller such as, but not limited to, acts of God, acts of war (whether declared or undeclared), riot, rebellion, sabotage, weather, fire, flood, drought, terrorism, earthquake, windstorm, explosion, strikes or other labor troubles preventing delivery hereunder, embargo, delays, acts of government or government priorities, regulations or rules, court orders, or any other causes not due to the sole fault or negligence of Seller.

22) CONFIDENTIALITY. Buyer agrees that any and all confidential information, in oral or written form, whether obtained from Seller, its agents or assigns, or other sources, or generated by Seller pursuant to this Agreement shall not be used for any purpose other than fulfilling the requirements of this Agreement. Buyer further agrees to keep in absolute confidence all data relative to the business of Seller, Buyer, their agents or assigns. No news release, including but not limited to photographs and film, public announcement, denial or confirmation of any part of the subject matter of any phase of any program hereunder shall be made by Buyer without prior written approval of Seller.

23) APPLICABLE LAW. The parties agree that this Agreement shall be governed and construed by the laws of the State of Delaware, but specifically excluding the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods

<u>24) DISPUTES.</u> The parties shall attempt to resolve any dispute arising out of or relating to this Agreement promptly by negotiation in good faith between executives who have the authority to settle the dispute. Either party shall give the other party written notice of any dispute not resolved in the ordinary course of business. Within seven (7) business days after delivery of such notice, the party receiving notice shall submit to the other a written response thereto.

All reasonable requests for information made by one party to any other shall be honored in a timely fashion. All negotiations conducted pursuant to this Article (and any of the parties' submissions in contemplation hereof) shall be kept confidential by the parties and shall be treated by the parties and their representatives as compromise and settlement negotiations under the Federal Rules of Evidence and any similar state rules.

If the matter in dispute has not been resolved within thirty (30) calendar days of the initial dispute date, either party (the "Claimant") may submit the dispute to binding arbitration to the State of Delaware office of the American Arbitration Association ("AAA") in accordance with the procedures set forth in the Commercial Arbitration Rules of the AAA then obtaining.

The Commercial Arbitration Rules of the AAA shall govern any arbitration proceeding hereunder. The arbitration shall be conducted by three (3) commercially-experienced arbitrators selected pursuant to the Commercial Arbitration Rules, and pre-hearing discovery shall be permitted if and only to the extent determined by the arbitrators to be necessary in order to effectuate resolution of the matter in dispute. The construction, interpretation and performance hereof and all transactions hereunder shall be governed by the laws of the State of

Delaware, without giving effect to the principles of conflict of laws thereof. Equitable remedies shall be available from the arbitrators. Consequential, punitive, exemplary, indirect or similar damages shall not be awarded by the arbitrators, although attorneys' fees and the costs of arbitration may be assessed against either or both parties. Any provisions of the award which are determined to be unenforceable in any jurisdiction, shall as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability, without invalidating the remaining provisions hereof. The arbitrators' decision shall be rendered within thirty (30) days of the conclusion of any hearing hereunder and the arbitrators' judgment shall be final and binding on the parties. Any award and judgment may be entered and enforced in any court of competent jurisdiction.

Resolution of disputes under the procedures of this Article shall be the sole and exclusive means of resolving disputes arising out of or relating to this Agreement.

<u>25) ENTIRE AGREEMENT.</u> The terms and provisions stated herein and within Attachments A, B, C, and D comprise all the terms, conditions, and agreements of the parties with respect to the Equipment and Software maintenance provided hereunder and supersede any provision on the face and reverse side of the Buyer's purchase order or any prior agreement inconsistent with the provisions hereof. No other terms, conditions, representations, warranties or guarantees, whether written or oral, express or implied, shall form a part hereof or have any legal effect whatsoever. No modification hereof shall be valid unless in writing and duly signed by Buyer's and Seller's authorized representatives.

26) TRADE SECRETS. Buyer acknowledges that all Trade Secrets relating to or concerning the TransitMaster™ system, including any modifications made thereto, are owned by Seller or Seller has the applicable rights of use and Buyer will maintain the Trade Secrets in strict confidence and not disclose the Trade Secrets to any third party without Seller's prior written consent. Buyer shall prohibit any persons other than Buyer employees from using any components of the TransitMaster™ system and Buyer shall restrict the disclosure and dissemination of all Trade Secrets reflected in the TransitMaster™ system to Buyer employees who are bound to respect the confidentiality of such Trade Secrets. These obligations of confidentiality will survive termination of this Agreement.

27) MEDIA AND PUBLICATION. Upon reasonable notice and consultation with the Buyer, Seller shall be entitled to publish press releases and other general marketing information related to this Agreement and the work done hereunder. Except for the foregoing, and subject to the strict requirements of the law, neither party will communicate with representatives of the general or technical press, radio, television, or other communication media regarding the work performed under this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld.

28) DATA/DATABASE OWNERSHIP. The license to use the Seller's TransitMaster™ database is granted to Buyer solely for the development of internal reports by Buyer and for the integrated operation of Trapeze Equipment and Trapeze Software components. Unless expressly included herein, all other access rights to the Seller's TransitMaster™ database are excluded from this Agreement, and the Buyer shall not develop or use, or authorize the development or use of, any other application interfaces to or from the Seller's TransitMaster™ database.

Trapeze Software Group, Inc. TransitMaster™ Equipment and Software Maintenance Agreement

However, Buyer shall retain ownership of the raw data that is inputted into the Seller's TransitMaster $^{\text{TM}}$ database.

29) ASSIGNMENT. This Agreement shall be binding upon the parties, their successors, and assignees; provided, however, that neither party shall assign any rights or obligations under this Agreement without the written consent of the other, which shall not be unreasonably withheld, except that Seller may assign this Agreement without consent to any subsidiary or affiliated company or by way of merger or acquisition.

IN WITNESS WHEREOF the parties have caused this Agreement				
executed this _	20	of		
Omnitrans				
Ву:				
Name and Title:				
Date:				
Trapeze Software Group, Inc.				
Ву:				
Name and Title:				
Date:				