



**BOARD OF DIRECTORS
SEPTEMBER 2, 2020
SUPPLEMENTAL INFORMATION**

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|------------------|--|
| ITEM #E19 | FLEX PARATRANSIT BUS MODIFICATIONS |
| ITEM #E20 | UNDERGROUND AND ABOVE GROUND STORAGE TANK |
| ITEM #F3 | MICROSOFT SOFTWARE ASSURANCE |
| ITEM #F4 | DC FAST CHARGING STATIONS |
| ITEM #F5 | PUSH/PULL YARD TRACTORS |



CONTRACT AGREEMENT

between

CONTRACTOR)

Complete Coach Works)
1863 Service Court)
Riverside, CA 92507)

(hereinafter "CONTRACTOR"))

Contact: Amber Lindsey, Dir. of Contracts)
Telephone: (951-684-9585)
Email: amber@complecoach.com)

Remit Address)
same)

And)

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

CONTRACT DOCUMENTS

CONTRACT NO. MNT21-05

FLEX PARATRANSIT BUS
MODIFICATIONS

Contract Amount: \$131,541

Omnitrans Project Manager:

Name: Mike Bonacio)
Title: Technical Services Manager)
Telephone: (909) 379-7179)
Email:)
mike.bonacio@omnitrans.org)

Contract Administrator:

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



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ATTACHMENT A – SCOPE OF WORK

ATTACHMENT B - REGULARY REQUIREMENTS

ATTACHMENT C – PRICING SCHEDULE

ATTACHMENT D – DBE REQUIREMENTS

ATTACHMENT E – WEAPONS PROHIBITED IN WORKPLACE POLICY 707

This Agreement is made and entered into as of this _____ day of _____, by and between Omnitrans (hereinafter referred to as "OMNITRANS") and Complete Coach Works (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 _____, 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:
 - 1) Any options that were requested by Omnitrans and/or contained in the Contractor's PROPOSAL or offer must have been evaluated in making the contract award prior to exercising any such options.
 - 2) Since Contractor's proposed pricing for the option years and additional services are considered in evaluating the Contractor's original proposal and form the basis for awarding the contract, Contractor shall be bound by the proposal pricing for additional services and/or option years, unless otherwise provided herein.
- B. Omnitrans will provide a minimum of thirty days (30) written notice to the Contractor of Omnitrans' exercise of its option to extend the contract years. Omnitrans may give notice of its exercise of the option for additional services at any time during the term of the contract. The minimum time for the written notice may be waived by mutual agreement.

4. COMPENSATION

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

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed One Hundred Thirty-One Thousand Five Hundred Forty-One Dollars (\$131,541), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

5. INVOICING AND PAYMENT

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

CONTRACTOR shall submit invoices in duplicate to:

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

Accountspayable@omnitrans.org

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

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

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

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

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

Complete Coach Works
1863 Service Court
Riverside CA 92507
Attn: Amber Lindsey
Title: Director of Contracts

8. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES

A. OMNITRANS' Project Manager

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

Project Manager: Mike Bonacio, Technical Services 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:

Dale E. Carson – President (951) 675-5000

Chuck Barnes – Vice President (951) 836-6530

Brad Carson – Director of Sales / Project Manager (951) 836-6528

Amber Lindsey – Director of Contracts (951) 684-9585

Thomas Hoskins – Director of Production (951) 836-6536

Alex Portillo – Director of Materials (951) 333-8190

Carlo Spartano – Director of Warranty & Special Projects (951) 333-7680

Ron Fleming – Quality Control Manager (951) 313-2894

Jos Timmermans – Director of Engineering (951) 318-3606

Kevin Obrien – General Sales Manager (951) 836-6533

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.

1. For any claims related to this project, Contractor's insurance coverage shall be primary insurance as respects Omnitrans, its officers, officials, employees, agents, and volunteers. Any insurance and/or deductibles and/or self-insured retentions or self-insured programs maintained by Omnitrans, its officers, officials, employees, agents, and volunteers shall be excess of Contractor's insurance and shall not be construed as contributory.
2. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to Omnitrans.

b. Workers' Compensation

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

c. Care, Custody, and Control

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

4) Acceptability of Insurers

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

5) Verification of Coverage

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

6) Subcontractors

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

7) Notification of Terminated Insurance

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

B. MINIMUM INSURANCE COVERAGE

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

- 1) ☒ **Commercial General Liability including Products/Completed Operations:** \$1,000,000; per occurrence for bodily and property damage liability and \$2,000,000 aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- 2) ☒ **Automobile Liability:** \$1,000,000; per occurrence for bodily and property damage liability and aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- 3) ☐ **Errors and Omissions Liability:** \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$3,000,000 aggregate or,
- 4) ☐ **Professional Liability:** \$1,000,000; per occurrence and aggregate.
- 5) ☒ **Workers' Compensation:** statutory limits or,
- 6) ☐ **Self Insurance Program:** a State Approved program in an amount and form that meets all applicable requirements of the Labor Code of the State of California.
- 7) ☒ **Employer's Liability:** \$1,000,000; per occurrence.
- 8) ☐ **Environmental Liability:** \$1,000,000; per occurrence and aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- 9) ☐ **Umbrella Policy:** \$4,000,000; per occurrence and aggregate Additional coverage for the above policies, *Omnitrans Additional Insured.*
- 10) ☐ **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 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

- A. In the event OMNITRANS rightfully obtains copies of Proprietary Data under the terms of the separate License Agreement and Escrow Agreement that govern rights in Documentation, Software and Intellectual Property created and/or developed by Contractor, its Third Party Software Contractors and its Suppliers as part of the Project, any derivative works and associated documentation created by or on behalf of OMNITRANS by Permitted Programmers (as defined in the License Agreement) shall be the sole and exclusive property of OMNITRANS (collectively, "OMNITRANS Intellectual Property"), and OMNITRANS may use, disclose and exercise dominion and full rights of ownership, in any manner in OMNITRANS Intellectual Property in connection with the use, operation and maintenance of a transportation system administered by OMNITRANS. No use of OMNITRANS Intellectual Property shall be made for any purpose other than in conjunction with a transportation system administered by CONTRACTOR, and OMNITRANS shall not sell, lease, rent, give away or otherwise disclose any OMNITRANS

Intellectual Property to any outside third party other than Permitted Programmers. To the extent there may be any question of rights of ownership or use in any OMNITRANS Intellectual Property, Contractor shall require all of its subcontractors and suppliers (including without limitation its Third Party Software Contractors) to assign to OMNITRANS, all worldwide right, title and interest in and to all OMNITRANS Intellectual Property in a manner consistent with the foregoing terms of this paragraph. Contractor shall execute any documents as OMNITRANS may from time to time reasonably request to effectuate the terms of this paragraph.

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

21. WORK FOR HIRE

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

22. SUBMITTAL OF CLAIMS BY CONTRACTOR

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

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

23. EQUAL OPPORTUNITY

CONTRACTOR shall not discriminate against, or grant preferential treatment to, any individual or group, or any employee or applicant for employment because of race, age, religion, color, ethnicity, sex, national origin, ancestry, physical disability, mental disability, political affiliation, sexual orientation, marital status or other

status protected by law. CONTRACTOR shall take action to ensure that applicants and employees are treated without regard to the above.

24. STANDARD OF PERFORMANCE

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

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

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

26. DISQUALIFYING POLITICAL CONTRIBUTIONS

In the event of a proposed amendment to this Agreement, CONTRACTOR shall provide prior to the execution of such amendment, a written statement disclosing any contribution(s) of \$250 or more made by CONTRACTOR or its subcontractor(s) to Omnitrans Board Members/Alternates or employees within the

preceding twelve (12) months of the date of the proposed amendment. Applicable contributions include those made by any agent/person/entity on behalf of CONTRACTOR or subcontractor(s).

27. COMPLIANCE WITH LAW

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

28. 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 D – 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.

36. LICENSING, PERMITS AND INSPECTION COSTS

- A. The CONTRACTOR warrants that it has all necessary licenses and permits required by the laws of the United States, State of California, and the County of San Bernardino, the Local Jurisdictions, and all other appropriate governmental agencies, and agrees to maintain these licenses and permits in effect for the duration of the Agreement. Further, FIRM warrants that its employees, agents, and contractors and subcontractors shall conduct themselves in compliance with such laws and licensure requirements including, without limitation, compliance with laws applicable to nondiscrimination, sexual harassment and ethical behavior throughout the duration of this Agreement. CONTRACTOR further warrants that it shall not retain or employ an unlicensed subcontractor to perform work on this Project. CONTRACTOR shall notify OMNITRANS immediately and in writing of its employees', agents', contractors' or subcontractors' inability to obtain or maintain, irrespective of the pendency of any appeal, any such licenses, permits, approvals, certificates, waivers, exemptions. Such inability shall be cause for termination of this Agreement.
- B. CONTRACTOR shall procure all permits and licenses; pay all charges, assessments and fees, as may be required by the ordinances and regulations of the public agencies having jurisdiction over the areas in which the work is located, and shall comply with all the terms and conditions thereof and with all lawful orders and regulations of each such public agency relating to construction operations under the jurisdiction of such agency.

37. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, and any and all of its Amendments, Appendices, Exhibits and Attachments; (2) provisions of IFB-MNT21-05 and any and all of its Addenda, Appendices, Exhibits and Attachments; and (3) CONTRACTOR's bid dated July 7, 2020.

37. ENTIRE AGREEMENT

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

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

OMNITRANS

COMPLETE COACH WORKS

Erin Rogers
CEO/General Manager

Dale E. Carson
President

Date

Date

Federal Tax I.D. No: 87-0807646

DP



ATTACHMENT A – SCOPE OF WORK
MNT21-05
FLEX PARATRANSIT BUS MODIFICATIONS

1. BACKGROUND

Contractor shall provide and install front and side destination signs, body modification services required to install front and side destination signs, passenger exit chime systems, and 2-position bicycle racks, onto ten (10) model-year 2019 Starcraft Paratransit buses.

2. GENERAL

All electrical connections shall be soldier joint. Soldier connections shall be properly insulated using shrink-tube and electrical tape.

3. FIRST ARTICLE

- A. CONTRACTOR shall confer with the Omnitrans Project Manager on the proposed retrofits and modifications prior to commencing any work on the first article bus.
- B. A single (first) vehicle shall be retrofitted, modified, and presented to Omnitrans PRIOR to the production of the remainder of the project.
- C. Omnitrans shall inspect and test this First Article bus and if dissatisfied with any portion of the work, shall disclose the reason(s) for rejection to the CONTRACTOR within two (2) business days.
- D. The parties shall confer as to what remedies shall be required and applied in order to render the work as acceptable by Omnitrans.
- E. After acceptance of the First Article bus by Omnitrans, the CONTRACTOR shall be provided up to three (3) buses at any one time to perform project requirements.

4. DESTINATION SIGN

- A. CONTRACTOR shall purchase Hanover Displays or approved equal front and side destination signs prior to the start of the project.
- B. As required by Hanover Displays, all *destination sign* components shall be installed by representatives from Hanover Displays. It is the CONTRACTOR's responsibility to facilitate those installations. Components include:

A	DD054WI2N0N50	112x15 12V OLEM White Front sign
B	BK2058	Bracket for above 112x15 Front Sign
C	DD139WI2N0N50	96x15 12V OLEM White Side sign
D	BK2180	Bracket for above 96x15 Side Sign
E	DG3 01 6 0	DERIC G3 CONT BASE 9-36V J1708 I\F
F	BK382	Bracket for DG3 controller
	CX-Cables	2 Sign Wiring loom:
G	CX698(1.0)	PWR CABLE
H	CX695(TYPE02)	DG3 CABLE
I	CX664	Cable - Splitter
J	CX665(4.0)	Cable – Point to Point
K	HELEN/USB	Programming kit including software

5. MODIFICATIONS TO BUS BODIES TO ACCOMMODATE DESTINATION SIGNS

- A. The CONTRACTOR shall collaborate with technical representatives from Hanover Displays for instructions on the modifications necessary to the buses in order to install the destination signs.
- B. CONTRACTOR shall:
 - 1) Create neat, clean, and leak-free apertures in the appropriate vehicle body locations suitable for this application.
 - 2) Repair and paint all body damage or collateral defects throughout the project area caused by the installation of the sign apertures and other project components.
 - 3) Utilize laminated safety glass.
 - 4) Utilize high-grade rubber seals to mount glass.
 - 5) Install all sign mounting hardware and materials in order to install all signs as per the sign manufacturer's instructions.
 - 6) Leak check each installation to assure quality workmanship.

6. PASSENGER EXIT CHIME

- A. Each bus shall be retrofitted with a passenger exit chime system.
- B. Each system shall be equipped with an electronic chime bell.
- C. The mode of chime activation shall be pull cord.
- D. Cord shall be coated yellow.

7. BICYCLE RACKS

- A. Contractor shall install Byk Rak® 2-position bicycle racks for medium duty buses or approved equal onto each bus.
- B. Installation shall be forwardmost of the bus.
- C. Installation shall not affect the engine, transmission cooling systems, nor shall it interfere with the air conditioning condenser function.
- D. Installation shall not adversely affect the visibility of the front license plate.
- E. Installation shall not interfere with headlamp projection.

8. TESTS

- A. Omnitrans shall be afforded two (2) business days to inspect, test and communicate any findings to the CONTRACTOR.
- B. Omnitrans shall inspect and test each bus after each bus is delivered:
 - 1) Visual aesthetics. The project areas shall be visually pleasing, and all artifacts caused by project work shall be mitigated.

- 2) The destination sign glass shall be inspected for compliance of scope.
- 3) The glass installation shall be inspected for water leaks.
- 4) The destination sign compartment shall be inspected for neatness of work including cable and wiring runs, blacked-out compartment background, neatness of any body work performed, glass and seal installation, vibration, and rattling.
- 5) The farebox installation shall be inspected for rigidity. The farebox operation shall be programmed and tested.
- 6) Chime system shall be inspected for quality of installation and function.
- 7) Bicycle rack for installation and regulatory compliance.

9. DELIVERY TO AND FROM THE CONTRACTOR WORKSITE

- A. Omnitrans shall deliver each bus to the CONTRACTOR IF the distance between the CONTRACTOR and the point of pick-up is 15 miles or less. If the distance is greater than 15 miles, the CONTRACTOR shall arrange pick-up of each vehicle.
- B. Buses shall be delivered to Omnitrans, 1700 West 5th Street, San Bernardino CA, 92411 by the CONTRACTOR.

Omnitrans
Attention: Mike Bonacio - Maintenance Department
1700 West 5th Street
San Bernardino CA, 92411.

End Scope of Work

Attachment B
REGULATORY REQUIREMENT
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REGULATORY REQUIREMENTS

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

Required Clauses for All FTA-Assisted Third-Party Contracts and Subcontracts

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.

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 ADMINISTRATION (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 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
 - (a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, Contractor shall comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of

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

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

RR-06

DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26

Disadvantaged Business Enterprises

- 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 Omnitrans' DBE Program 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.
- 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.

Required Clauses for Awards Exceeding \$2,000

RR-07

DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

Background and Application

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

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

Clause Language

Davis-Bacon and Copeland Anti-Kickback Acts

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

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

classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RR-08
SEISMIC SAFETY REQUIREMENTS 42 U.S.C. 7701 et seq. 49 CFR Part 41

Applicability to Contracts

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

Flow Down

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

Model Clauses/Language

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

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

Required Clauses for Awards Exceeding \$10,000

RR-09
TERMINATION 49 U.S.C. Part 18 FTA Circular 4220.1F

Applicability to Contracts

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

Flow Down

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

- a. **Termination for Convenience (General Provision)** Omnitrans may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Omnitrans to be paid the Contractor. If the Contractor has any property in its possession belonging to the Omnitrans, the Contractor will account for the same, and dispose of it in the manner the Omnitrans directs.
- b. **Opportunity to Cure (General Provision)** Omnitrans in its sole discretion may, in the case of a termination for breach or default, allow the Contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions
- If Contractor fails to remedy to Omnitrans' satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from Omnitrans setting forth the nature of said breach or default, Omnitrans shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Omnitrans from also pursuing all available remedies against Contractor and its sureties for said breach or default.
- c. **Waiver of Remedies for any Breach** In the event that Omnitrans elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by Omnitrans shall not limit Omnitrans remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- d. **Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, Omnitrans may terminate this contract for default. Omnitrans shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, Omnitrans may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to Omnitrans resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Omnitrans in completing the work.

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

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

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

Required Clauses for Awards Exceeding \$25,000

RR-010

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.

Awards Exceeding \$100,000 by Statute

RR-011

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-012

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.

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-013
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.

Required Clauses for Awards Exceeding the Simplified Acquisition Threshold (\$150,000)

RR-014
BUY AMERICA *

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

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

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

RR-015
BREACHES AND DISPUTE RESOLUTION 49 CFR Part 18 FTA Circular 4220.1F

Applicability to Contracts

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach

contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down

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

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

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

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

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

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

Transport of Property or Persons

RR-016

CARGO PREFERENCE*

A. Applicability

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

B. USE OF UNITED STATES FLAG VESSELS

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

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

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

**RR-017
FLY AMERICA**

A. Applicability

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

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

CONSTRUCTION ACTIVITIES

RR-018

DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

Background and Application

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

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

Clause Language

Davis-Bacon and Copeland Anti-Kickback Acts

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

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

Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) **Withholding** - Omnitrans shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RR-019

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT *

A. Applicability

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

- B. Pursuant to the Labor Standards Provisions Applicable to Non-construction Contracts subject to the Federal Contract Work Hours and Safety Standards Act, 40 U.S.C.A. § 327 through 332 as implemented by U.S. Department of Labor regulations, 29 CFR 5.5 (b) and (c) Contractor and Subcontractor's contracting for any part of the Contract work shall comply with the following:
1. **Overtime requirements** – Neither Contractor nor any Subcontractor contracting for any part of the Contract work that requires or involves the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 2. **Violation; liability for unpaid wages; liquidated damages** – In the event of any violation of the Article set forth in paragraph (1) of this Article Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages. In addition, Contractor and Subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this Article, in the sum of ten dollars (\$10) for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this Article.
 3. **Withholding for unpaid wages and liquidated damages** – Omnitrans shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by Contractor or Subcontractor under the Contract or any other Federal contract with Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by Contractor, such sums as may be determined to be necessary to satisfy any liabilities of Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this Article.
 4. **Subcontracts** – Contractor or Subcontractor shall insert this Article in any Subcontracts and also an Article requiring the Subcontractors to include this Article in any lower tier Subcontracts. Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with this Article.
 5. **Payrolls and basic records** – The records to be maintained hereinabove shall be made available by Contractor or Subcontractor for inspection, copying, or transcription by Omnitrans and U.S. Dept. of Labor. Contractor and Subcontractor shall maintain payrolls and basic records during the course of the work and shall preserve them for a period of three (3) years from the completion of the Contract

for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid.

RR-020

BONDING REQUIREMENTS

Applicability to Contracts

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

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

RR-021

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

Applicability to Contracts

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

Flow Down

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

Model Clauses/Language

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

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

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.

TRANSIT OPERATIONS

RR-022

TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS *

A. Applicability

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

B. General Transit Employee Protective Requirements

If FTA has determined that this Contract involves transit operations financed in whole or in part with Federal assistance (other than Federal assistance authorized by 49 U.S.C. § 5310(a)(2) or 49 U.S.C. § 5311), and if the U.S. Secretary of Transportation has determined that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for Omnitrans under this Contract, then Contractor shall perform the transit

operations work under the Contract in compliance with terms and conditions, (a) determined by the U.S. Secretary of Labor to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. Department of Labor ("U. S. DOL") guidelines at 29 C.F.R. Part 215, and any amendments thereto, and (b) stated in a U. S. DOL letter of certification to FTA, the date of which is set forth in the applicable Grant Agreement or Cooperative Agreement with Omnitrans, and which is incorporated in the Form of Contract as a Contract Document entitled "U. S. DOL Certification".

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

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

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

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

E. Indemnity

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

CHARTER BUS OPERATION

Charter Service Operations.

The Recipient agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142, will engage in charter service operations, except as authorized by 49 U.S.C. § 5323(d) and FTA regulations, "Charter Service," 49 C.F.R. Part 604, and any Charter Service regulations or FTA

directives that may be issued, except to the extent that FTA determines otherwise in writing. The Charter Service Agreement the Recipient has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. If the Recipient has failed to select the Charter Service Agreement in its latest annual Certifications and Assurances to FTA and does conduct charter service operations prohibited by FTA's Charter Service regulations, the Recipient understands and agrees that: (1) the requirements of FTA's Charter Service regulations and any amendments thereto will apply to any charter service it or its subrecipients, lessees, third party contractors, or other participants in the Project provide; (2) the definitions of FTA's Charter Service regulations will apply to the Recipient's charter operations, and (3) a pattern of violations of FTA's Charter Service regulations may require corrective measures and imposition of remedies, including barring the Recipient, subrecipient, lessee, third party contractor, or other participant in the Project operating public transportation under the Project from receiving Federal financial assistance from FTA, or withholding an amount of Federal assistance as set forth in Appendix D to FTA's Charter Service regulations.

SCHOOL BUS OPERATIONS

The Recipient agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142, will engage in school transportation operations for the transportation of students or school personnel exclusively in competition with private school transportation operators, except as authorized by 49 U.S.C. §§ 5323(f) or (g), as applicable, and FTA regulations, "School Bus Operations," 49 C.F.R. Part 605 to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), in accordance with any School Transportation Operations regulations or FTA directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing. The School Transportation Operations Agreement the Recipient has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. If the Recipient has failed to select the School Transportation Agreement in its latest annual Certifications and Assurances to FTA and does conduct school transportation operations prohibited by FTA's School Bus Operations regulations, 49 C.F.R. Part 605, to the extent those regulations are consistent with 49 U.S.C. §§ 5323(f) or (g), the Recipient understands and agrees that: (1) the requirements of FTA's School Bus Operations regulations, 49 C.F.R. Part 605, to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), will apply to any school transportation service it or its subrecipients, lessees, third party contractor, or other participants in the project provide, (2) the definitions of FTA's School Bus Operations regulations will apply to the Recipient's school transportation operations, and (3) if there is a violation of FTA's School Bus Operations regulations, to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), FTA will bar the Recipient, subrecipient, lessee, third party contractor, or other Project participant operating public transportation that has violated FTA's School Bus Operations regulations, 49 C.F.R. Part 605, to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), from receiving Federal transit assistance in an amount FTA considers appropriate.

RR-023
ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM *

A. Applicability

This Article applies to federally funded contracts for transit operations.

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

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

C. Certificate of Compliance

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

D. Drug and Alcohol Testing Program

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

E. Alcohol and Drug Free Workplace Program

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

PLANNING, RESEARCH, DEVELOPMENT AND DEMONSTRATION PROJECTS

PATENT RIGHTS

a. General. If any invention, improvement, or discovery of the Recipient or of any subrecipient, lessee, third party contractor, or other participant at any tier of the Project is conceived or first actually reduced to practice in the course of or under the Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Recipient agrees to notify FTA immediately and provide a detailed report in a format satisfactory to FTA.

b. Federal Rights. The Recipient agrees that its rights and responsibilities, and those of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, pertaining to that invention, improvement, or discovery will be determined in accordance with applicable Federal laws and regulations, including any waiver thereof. Absent a determination in writing to the contrary by the Federal Government, the Recipient agrees to transmit to FTA those rights due the Federal Government in any invention, improvement, or discovery resulting from that subagreement, third party contract, third party subcontract, or arrangement, as specified in 35 U.S.C. §§ 200 *et seq.*, and U.S. Department of Commerce regulations, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” 37 C.F.R. Part 401, irrespective of the status of the Recipient, subrecipient, lessee, third party contractor or other participant in the Project (*i.e.*, a large business, small business, State government, State instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual).

c. License Fees and Royalties. FTA considers income earned from license fees and royalties for patents, patent applications, and inventions produced under the Project to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 C.F.R. Parts 18 and 19, the Recipient has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 U.S.C. §§ 200 *et seq.*, which applies to patent rights developed under a research project.

RIGHTS IN DATA AND COPYRIGHTS

a. Definition. The term “subject data,” as used in this Section 18 of this Master Agreement means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Grant Agreement or Cooperative Agreement for the Project. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. “Subject data” do not include financial reports, cost analyses, or other similar information used for Project administration.

b. General. The following restrictions apply to all subject data first produced in the performance of the Grant Agreement or Cooperative Agreement for the Project:

- (1) Except for its own internal use, the Recipient may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Recipient authorize others to do so,

without the prior written consent of the Federal Government, unless the Federal Government has previously released or approved the release of such data to the public.

(2) The restrictions on publication of Paragraph 18.b(1) of this Master Agreement, however, do not apply to a Grant Agreement or Cooperative Agreement with an institution of higher learning.

c. Federal Rights in Data and Copyrights. The Recipient agrees to provide to the Federal Government a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the subject data described in this Subsection 18.c of this Master Agreement. As used herein, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not provide or otherwise extend to other parties the Federal Government's license to:

(1) Any subject data developed under the Grant Agreement or Cooperative Agreement for the Project, or under a subagreement, lease, third party contract or other arrangement at any tier of the Project, supported with Federal assistance derived from the Grant Agreement or Cooperative Agreement for the Project, whether or not a copyright has been obtained; and

(2) Any rights of copyright to which a Recipient, subrecipient, lessee, third party contractor, or other participant at any tier of the Project purchases ownership using Federal assistance.

d. Special Federal Rights in Data for Research, Development, Demonstration, and Special Studies Projects. In general, FTA's purpose in providing Federal assistance for a research, development, demonstration, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to Project participants. Therefore, when the Project is completed, the Recipient agrees to provide a Project report that FTA may publish or make available for publication on the Internet. In addition, the Recipient agrees to provide other reports pertaining to the Project that FTA may request. The Recipient agrees to identify clearly any specific confidential, privileged, or proprietary information it submits to FTA. In addition, except to the extent that FTA determines otherwise in writing, the Recipient of Federal assistance to support a research, development, demonstration, or a special studies Project agrees that, in addition to the rights in data and copyrights that it must provide to the Federal Government as set forth in Subsection 18.c of this Master Agreement, FTA may make available to any FTA recipient, subrecipient, third party contractor, third party subcontractor or other participant at any tier of the Project, either FTA's license in the copyright to the subject data or a copy of the subject data. If the Project is not completed for any reason whatsoever, all data developed under the Project shall become subject data as defined in Subsection 18.a of this Master Agreement and shall be delivered as the Federal Government may direct. This Subsection 18.d, however, does not apply to adaptations of automatic data processing equipment or programs for the Recipient's use when the costs thereof are financed with Federal assistance through an FTA capital program.

e. License Fees and Royalties. FTA considers income earned from license fees and royalties for copyrighted material, or trademarks produced under the Project to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 C.F.R. Parts 18 and 19, the Recipient has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 U.S.C. §§ 200 *et seq.*, which applies to patent rights developed under a research project.

f. Hold Harmless. Except as prohibited or otherwise limited by State law or except to the extent that FTA determines otherwise in writing, upon request by the Federal Government, the Recipient agrees to indemnify, save, and hold harmless the Federal Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Recipient of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. The Recipient shall not be required to indemnify the Federal Government for any such liability caused by the wrongful acts of Federal employees or agents.

g. Restrictions on Access to Patent Rights. Nothing in Section 18 of this Master Agreement pertaining to rights in data shall either imply a license to the Federal Government under any patent or be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.

h. Data Developed Without Federal Funding or Support. In connection with the Project, the Recipient may find it necessary to provide data to FTA developed without any Federal funding or support by the Federal Government. The requirements of Subsections 18.b, 18.c, and 18.d of this Master Agreement do not apply to data developed without Federal funding or support by the Federal Government, even though that data may have been used in connection with the Project. Nevertheless, the Recipient understands and agrees that the Federal Government will not be able to protect data from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."

- i. Requirements to Release Data. To the extent required by U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," at 49 C.F.R. § 19.36(d), or other applicable Federal laws or Federal regulations, the Recipient understands and agrees that the data and information it submits to the Federal Government may be required to be released in accordance with the Freedom of Information Act (or another Federal law or Federal regulation providing access to such records).

SPECIAL NOTIFICATION REQUIREMENTS FOR STATES

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.

MISCELLANEOUS SPECIAL REQUIREMENTS

RR-024

ENERGY CONSERVATION REQUIREMENTS

B. Applicability

This Article applies to all federally funded contracts.

- C. 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-025

RECYCLED PRODUCTS

D. 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.

- E. 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.
- F. 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.

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-026
ADA ACCESS

A. Applicability

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

B. Access Requirements for Persons with Disabilities

Contractor shall comply with:

1. The requirements of 49 U.S.C. § 5301(d), which states the Federal policy that elderly persons and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy;
2. All applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps;
3. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act;
4. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act; and
5. All applicable requirements of the following regulations and any subsequent amendments thereto:
 - (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
 - (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
 - (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194; and
- (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609;
- (11) Any implementing requirements FTA may issue.

NOT INCLUDED IN UPDATED POLICY

RR-01

ADMINISTRATIVE CODE *

A. Applicability

This Article applies to all contracts.

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

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

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

C. Campaign Contributions

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

RR-02

DISCRIMINATION *

A. Applicability

This Article applies to all contracts.

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

RR-03

WHISTLEBLOWER REQUIREMENTS *

A. Applicability

This Article applies to all contracts.

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

RR-04
PUBLIC RECORDS ACT *

A. Applicability

This Article applies to all contracts.

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

RR-05
PRIVACY ACT - 5 U.S.C. 552

Applicability to Contracts

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

Flow Down

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

Model Clause/Language

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

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

- (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- (2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

RR-06

VETERANS PREFERENCE

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

END OF REGULATORY REQUIREMENTS

ATTACHMENT C - PRICING SCHEDULE**MNT21-05, FLEX PARATRANSIT BUS MODIFICATIONS**

Description	Unit Cost	Total 10 buses
Destination Sign System, front and side	\$4,114.50	\$41,145.00
Destination Sign glass	\$780.00	\$7,800.00
Chime System Components	\$780.00	\$7,800.00
Byk-Rak Bicycle Rack	\$1,820.00	\$18,200.00
CA Sales Tax 8%	\$599.56	\$5,995.60
Installation	\$5,060.00	\$50,600.00

Total	\$13,154.06	\$131,540.60
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ATTACHMENT D

Disadvantaged Business Enterprise (DBE) Program Requirements

Disadvantaged Business Enterprise (DBE) Participation

I. Race-Neutral DBE Participation

The Contractor is required to submit a DBE Race-Neutral Participation Listing to identify DBE subcontractor(s) proposed in the performance of this U.S. DOT-assisted contract, and further agrees to ensure that DBE subcontractors listed in the “DBE Race-Neutral Participation Listing” perform work and/or supply materials in accordance with original commitments, unless otherwise directed and/or approved by the Omnitrans prior to the Prime Contractor effectuating any changes to its race-neutral DBE participation commitments. The Contractor is required to submit this form whether or not DBE subcontractors have been proposed.

Prime Contractor shall ensure the DBE information submitted shall include the North American Industry Classification System (NAICS) code applicable to the kind of work the DBE subcontractor(s) will perform on the contract.

In the event the Contractor commits to utilizing a DBE in the performance of this contract after contract award, the Contractor will comply with the same reporting requirements delineated above and submit a “DBE Race-Neutral Participation Listing” for new DBE commitments made after award and during contract performance.

II. DBE Policy and Applicability

In accordance with federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), Omnitrans has adopted a Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR, Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Programs”.

The project is subject to these stipulated regulations and Omnitrans’ DBE Program. In order to ensure that Omnitrans achieves its overall DBE Program goal, Omnitrans encourages the participation of DBEs as defined in 49 CFR, Part 26 in the performance of contracts financed in whole or in part with U.S. DOT funds. Pursuant to the intent of these regulations, it is also the policy of Omnitrans to:

Fulfill the spirit and intent of the Federal DBE Program regulations published under U.S. DOT Title 49 CFR, Part 26, by ensuring that DBE’s have equitable access to participate in all of Omnitrans’ and identified Prime Contractor DOT-assisted contracting opportunities.

- a. Ensure that DBEs can fairly compete for and perform on all DOT-assisted contracts and subcontracts.
- b. Ensure non-discrimination in the award and administration of Omnitrans’ DOT-assisted contracts.
- c. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
- d. Ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs in DOT-assisted contracts.
- e. Help remove barriers to the participation of DBEs in DOT-assisted contracts.
- f. Assist in the development of firms that can compete successfully in the marketplace outside the DBE Program.

ATTACHMENT D

Disadvantaged Business Enterprise (DBE) Program Requirements

Contractor will not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

Any terms used in this section that is defined in 49 CFR, Part 26, or elsewhere in the Regulations, will have the meaning set forth in the Regulations. In the event of any conflicts or inconsistencies between the Regulations and Omnitrans' DBE Program with respect to DOT-assisted contracts, the Regulations will prevail.

III. Omnitrans' Race-Neutral DBE Policy Implementation Directives

Pursuant to Race-Neutral DBE policy directives issued by the U.S. DOT in response to the Ninth Circuit U.S. Court of Appeals decision in *Western States Paving Co. v. Washington State Department of Transportation*, Omnitrans has implemented a wholly Race-Neutral DBE Program.

A Race-Neutral DBE Program is one that, while benefitting DBEs, is not solely focused on DBE firms. Therefore, under a Race-Neutral DBE Program, Omnitrans does not establish numeric race-conscious DBE participation goals on its DOT-assisted contracts. However, the Prime Contractor will adhere to race-neutral DBE participation commitments made at the time of contract award.

IV. Definitions

The following definitions apply to the terms as used in these provisions:

- a. "Disadvantaged Business Enterprise (DBE)" means a small business concern: (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- b. "Socially and Economically Disadvantaged Individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans, women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, or by Omnitrans pursuant to 49 CFR part 26.65. Members of the following groups are presumed to be socially and economically disadvantaged:
 1. "Black Americans" which includes persons having origins in any of the Black racial groups of Africa;
 2. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 3. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 4. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;

ATTACHMENT D

Disadvantaged Business Enterprise (DBE) Program Requirements

5. "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh; and
 6. Women, regardless of ethnicity or race.
- c. "Owned and Controlled" means a business: (a) which is at least 51 percent owned by one or more "Socially and Economically Disadvantaged Individuals" or, in the case of a publicly-owned business, at least 51 percent of the stock of which is owned by one or more "Socially and Economically Disadvantaged Individuals"; and (b) whose management and daily business operations are controlled by one or more such individuals.
 - d. "Manufacturer" means a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the contractor.
 - e. "Regular Dealer" means a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. The firm must engage in, as its principal business, and in its own name, the purchase and sale of the product in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock if it owns or operates distribution equipment.
 - f. "Other Socially and Economically Disadvantaged Individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who, on a case-by-case basis, are determined by Small Business Administration or certifying agency under the California Unified Certification Program (CUCP) to meet the social and economic disadvantage criteria described in 49 CFR Part 26.67.

V. Race-Neutral DBE Submission and Ongoing Reporting Requirements (Post- Award)

Contractor shall report both DBE and non-DBE subcontractor payment details to Omnitrans using the web-based system by the 15th of each month. The web-based system allows Contractor to manage their own records, maintain accurate contract award information, and report subcontractor payment details online.

Use of the web-based system is mandatory for the Contractor and subcontractor to use unless Omnitrans instructs otherwise in writing to Contractor. A Contractor account will be created after award, which will allow Contractor to enter data into the web-based system via an internet browser. After award, Contractor will receive instructions to set up their account and enter required subcontractor data. Contractor must require each of its subcontractors to enter required payment verification information into the web-based system. Subcontractors with lower tier subcontractors must require lower tier subcontractors to enter required payment data into the web-based system. Failure of Contractor or its subcontractors to enter required information on a timely basis may result in delay of payment by Omnitrans and may subject Contractor to withholding of payments or penalties for noncompliance.

If Omnitrans approves in writing the use of a form instead of the web-based system to report monthly payments to subcontractors, Contractor will complete and submit the following exhibit at the times specified:

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Summary Subcontractors Paid Monthly Report and Payment Verification: (Requires Omnitrans Approval in Writing).

The Contractor will be required to complete and submit a Form 103 to Omnitrans designee by the 15th of each month until completion of the contract to facilitate reporting of all subcontractor payments, including DBE firms, following the first month of contract activity. The Contractor will report the total dollar value paid to all subcontractors, including DBEs, for the applicable reporting period. The Contractor will also report the subcontractor's scope of work and the total subcontract value of commitment for each subcontractor reported.

Upon completion of the contract, the Contractor will be required to prepare and submit to Omnitrans a "Summary Subcontractor Paid Monthly Report and Payment Verification" (Form 103) clearly marked "Final" to facilitate reporting and capturing actual subcontractor payments. Contractor will complete and submit a Final Form 103 whether or not DBEs were utilized in the performance of the contract.

Contractor is advised not to report the participation of DBEs toward the Contractor's race-neutral DBE attainment until the amount being counted has been paid to the DBE.

Contractor is responsible for providing subcontractor's proof of DBE Certification.

Contractor and subcontractors are subject to periodic audits by Omnitrans and or their designated representative. Program audits serve as a part of Omnitrans assessing program compliance. The audit may include comprehensive review of program related forms, documents and procedures, including but not limited to site visits. The information presented for review shall be provided in an auditable manner.

VI. DBE Eligibility and Commercially Useful Function Standards

- a. A DBE must be a small business concern as defined pursuant to Section 3 of the U.S. Small Business Act and relevant regulations promulgated pursuant thereto.
- b. A DBE may participate as a prime contractor, subcontractor, joint venture partner with a prime or subcontractor, vendor of material or supplies, or as a trucking company.
- c. A DBE joint venture partner must be responsible for specific contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- d. A DBE must perform a commercially useful function in accordance with 49 CFR 26.55 (i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.) A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce to presume it is performing a commercially useful function.
- e. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources:
 1. The CUCP website, accessed at <https://dot.ca.gov/programs/business-and-economic-opportunity/dbe-search>.

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2. The CUCP DBE Directory, which may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, CA 95815; Telephone (916) 445-3520.

VII. DBE Crediting Provisions

When a DBE is proposed to participate in the contract, either as a Prime Contractor or Subcontractor, only the value of the work proposed to be performed by the DBE with its own forces may be counted toward race-neutral DBE participation. If the Contractor is a DBE joint venture participant, only the DBE proportionate interest in the joint venture will be counted.

- a. If a DBE intends to subcontract part of the work of its subcontract to a lower tier Subcontractor, the value of the subcontracted work may be counted toward race-neutral DBE participation only if the DBE Subcontractor is a certified DBE and actually performs the work with their own forces. Services subcontracted to a non-DBE firm may not be credited toward the prime Contractor's race-neutral DBE attainment.
- b. Contractor is to calculate and credit participation by eligible DBE vendors of equipment, materials, and suppliers toward race-neutral DBE attainment, as follows:
 1. Sixty percent (60%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a regular dealer; or
 2. One hundred percent (100%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a DBE manufacturer.
- c. The following types of fee or commissions paid to DBE Subcontractors, Brokers, and Packagers may be credited toward the prime Contractor's race-neutral DBE attainment, provided that the fee or commission is reasonable, and not excessive, as compared with fees or commissions customarily allowed for similar work, including:
 1. Fees and commissions charged for providing bona fide professional or technical services, or procurement of essential personnel, facilities, equipment, materials, or supplies required in the performance of the Contract;
 2. Fees charged for delivery of material and supplies (excluding the cost of materials or supplies themselves) when the licensed hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the material and supplies;
 3. Fees and commissions charged for providing any insurance specifically required in the performance of the Contract.
- d. Contractor may count the participation of DBE trucking companies toward race-neutral DBE attainment, as follows:
 1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.
 2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

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4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
6. For purposes of this paragraph, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
7. If the Contractor listed a non-certified DBE 1st tier Subcontractor to perform work on this contract, and the non-certified DBE subcontractor subcontracts a part of its work or purchases materials and/or supplies from a lower tier DBE certified Subcontractor or Vendor, the value of work performed by the lower tier DBE firm's own forces can be counted toward race-neutral DBE participation on the contract.

VIII. Performance of DBE Subcontractors

DBE subcontractors listed by the Prime Contractor in its "DBE Race-Neutral Participation Listing" submitted at the time of proposal submission or added during performance of the contract will perform the work and supply the materials for which they are listed, unless the Contractor has received prior written authorization from Omnitrans to perform the work with other forces or to obtain the materials from other sources.

The Contractor will provide written notification to Omnitrans in a timely manner of any changes to its anticipated DBE participation. This notice should be provided prior to commencement of that portion of the work and the Prime Contractor shall demonstrate good faith efforts in continuing doing business with DBE's.

Contractor cannot fully or partially terminate or substitute a DBE subcontractor without good cause and prior written consent from Omnitrans. This includes, but is not limited to, instances in which a prime seeks to perform work originally designated for a DBE with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm. If the Contractor fails to obtain written consent, the Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE(s). Contractor shall exercise good faith efforts to replace the original DBE subcontractor with another DBE firm for at least the same amount remaining on the original DBE's subcontract.

IX. Additional DBE Subcontractors

In the event Contractor identifies additional DBE subcontractors or suppliers not previously identified by Contractor for race-neutral DBE participation under the contract, Contractor will notify Omnitrans by submitting the form "DBE Race-Neutral Participation Listing" to enable Contractor and Omnitrans to capture all race-neutral DBE participation.

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Disadvantaged Business Enterprise (DBE) Program Requirements

X. DBE Certification Status

If a listed DBE subcontractor is decertified during the life of the project, the decertified subcontractor will notify the Contractor in writing with the date of decertification. The Contractor will furnish the written documentation to Omnitrans in a timely manner.

XI. Contractor's Assurance Clause Regarding Non-Discrimination

In compliance with State and Federal anti-discrimination laws, the Contractor will affirm that they will not exclude or discriminate on the basis of race, color, national origin, or sex in consideration of contract award opportunities. Further, the Contractor will affirm that they will consider, and utilize subcontractors and vendors, in a manner consistent with non-discrimination objectives.

Contractor (and each subcontract the Contractor signs with a subcontractor) must include the following assurance: Contractor or subcontractor 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 DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- a. Withholding monthly progress payments;
- b. Assessing sanctions;
- c. Liquidated damages; and/or
- d. Disqualifying the contractor from future bidding as non-responsible.

XII. Prompt Payment

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

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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.

XIII. Records Retention

Prime Contractor shall maintain all DBE program records, including a thorough and updated bidder's list.

Omnitrans requires prime contractors to maintain records of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for Omnitrans' financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of Omnitrans or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

XIV. Bidders List

The U.S. Department of Transportation (DOT) requires Omnitrans to maintain a "Bidders List" containing information about all firms (DBE and non-DBE) that bid, propose or quote on Omnitrans' DOT-assisted contracts, in accordance with 49 CFR Part 26.11, for use in the Omnitrans' overall triennial DBE goal-setting process. Therefore, the Contractor shall provide at a minimum, the following requested information for every firm who submitted a quote, bid, or proposal, including the primary Contractor, whether successful or unsuccessful in their attempt to obtain a contract:

- a. Firm name
- b. Firm address
- c. Status of DBE or non-DBE
- d. Age of the business
- e. Range of annual gross receipts for the last year

A Bidders List form is attached for completion by Contractor. It is the responsibility of the Contractor to verify accuracy of information submitted by each subcontractor. The Bidders List content will not be considered in evaluating the bid/proposal or determining award of the contract.



PERSONNEL POLICY MANUAL

POLICY 707 PAGE 1 OF 6

SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS
BOARD OF DIRECTORS

DATE: June 7, 2017

I. Purpose

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

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

II. Scope

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

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

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

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

III. Procedure

A. COMMUNICATION OF POLICY

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

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

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B. PROHIBITED CONDUCT

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

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

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

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

C. SEARCH

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

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

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

D. DISCIPLINE

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

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up to and including separation of employment.

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

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

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

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

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

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

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

2. Visitor Violations

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

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

F. FALSE REPORTS

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

G. ROLES AND RESPONSIBILITIES

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

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

H. SAFETY FIRST

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

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

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

I. ANTI-RETALIATION PROVISION

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

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J. DEFINITIONS

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



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

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

SIGNS

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

ATTACHMENT G

Disadvantaged Business Enterprise (DBE) Program Requirements

Disadvantaged Business Enterprise (DBE) Participation

I. Race-Neutral DBE Participation

The Contractor is required to submit a DBE Race-Neutral Participation Listing to identify DBE subcontractor(s) proposed in the performance of this U.S. DOT-assisted contract, and further agrees to ensure that DBE subcontractors listed in the “DBE Race-Neutral Participation Listing” perform work and/or supply materials in accordance with original commitments, unless otherwise directed and/or approved by the Omnitrans prior to the Prime Contractor effectuating any changes to its race-neutral DBE participation commitments. The Contractor is required to submit this form whether or not DBE subcontractors have been proposed.

Prime Contractor shall ensure the DBE information submitted shall include the North American Industry Classification System (NAICS) code applicable to the kind of work the DBE subcontractor(s) will perform on the contract.

In the event the Contractor commits to utilizing a DBE in the performance of this contract after contract award, the Contractor will comply with the same reporting requirements delineated above and submit a “DBE Race-Neutral Participation Listing” for new DBE commitments made after award and during contract performance.

II. DBE Policy and Applicability

In accordance with federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), Omnitrans has adopted a Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR, Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Programs”.

The project is subject to these stipulated regulations and Omnitrans’ DBE Program. In order to ensure that Omnitrans achieves its overall DBE Program goal, Omnitrans encourages the participation of DBEs as defined in 49 CFR, Part 26 in the performance of contracts financed in whole or in part with U.S. DOT funds. Pursuant to the intent of these regulations, it is also the policy of Omnitrans to:

Fulfill the spirit and intent of the Federal DBE Program regulations published under U.S. DOT Title 49 CFR, Part 26, by ensuring that DBE’s have equitable access to participate in all of Omnitrans’ and identified Prime Contractor DOT-assisted contracting opportunities.

- a. Ensure that DBEs can fairly compete for and perform on all DOT-assisted contracts and subcontracts.
- b. Ensure non-discrimination in the award and administration of Omnitrans’ DOT-assisted contracts.
- c. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
- d. Ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs in DOT-assisted contracts.
- e. Help remove barriers to the participation of DBEs in DOT-assisted contracts.
- f. Assist in the development of firms that can compete successfully in the marketplace outside the DBE Program.

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Disadvantaged Business Enterprise (DBE) Program Requirements

Contractor will not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

Any terms used in this section that is defined in 49 CFR, Part 26, or elsewhere in the Regulations, will have the meaning set forth in the Regulations. In the event of any conflicts or inconsistencies between the Regulations and Omnitrans' DBE Program with respect to DOT-assisted contracts, the Regulations will prevail.

III. Omnitrans' Race-Neutral DBE Policy Implementation Directives

Pursuant to Race-Neutral DBE policy directives issued by the U.S. DOT in response to the Ninth Circuit U.S. Court of Appeals decision in *Western States Paving Co. v. Washington State Department of Transportation*, Omnitrans has implemented a wholly Race-Neutral DBE Program.

A Race-Neutral DBE Program is one that, while benefitting DBEs, is not solely focused on DBE firms. Therefore, under a Race-Neutral DBE Program, Omnitrans does not establish numeric race-conscious DBE participation goals on its DOT-assisted contracts. However, the Prime Contractor will adhere to race-neutral DBE participation commitments made at the time of contract award.

IV. Definitions

The following definitions apply to the terms as used in these provisions:

- a. "Disadvantaged Business Enterprise (DBE)" means a small business concern: (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- b. "Socially and Economically Disadvantaged Individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans, women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, or by Omnitrans pursuant to 49 CFR part 26.65. Members of the following groups are presumed to be socially and economically disadvantaged:
 1. "Black Americans" which includes persons having origins in any of the Black racial groups of Africa;
 2. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 3. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 4. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;

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Disadvantaged Business Enterprise (DBE) Program Requirements

5. "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh; and
 6. Women, regardless of ethnicity or race.
- c. "Owned and Controlled" means a business: (a) which is at least 51 percent owned by one or more "Socially and Economically Disadvantaged Individuals" or, in the case of a publicly-owned business, at least 51 percent of the stock of which is owned by one or more "Socially and Economically Disadvantaged Individuals"; and (b) whose management and daily business operations are controlled by one or more such individuals.
 - d. "Manufacturer" means a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the contractor.
 - e. "Regular Dealer" means a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. The firm must engage in, as its principal business, and in its own name, the purchase and sale of the product in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock if it owns or operates distribution equipment.
 - f. "Other Socially and Economically Disadvantaged Individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who, on a case-by-case basis, are determined by Small Business Administration or certifying agency under the California Unified Certification Program (CUCP) to meet the social and economic disadvantage criteria described in 49 CFR Part 26.67.

V. Race-Neutral DBE Submission and Ongoing Reporting Requirements (Post- Award)

Contractor shall report both DBE and non-DBE subcontractor payment details to Omnitrans using the web-based system by the 15th of each month. The web-based system allows Contractor to manage their own records, maintain accurate contract award information, and report subcontractor payment details online.

Use of the web-based system is mandatory for the Contractor and subcontractor to use unless Omnitrans instructs otherwise in writing to Contractor. A Contractor account will be created after award, which will allow Contractor to enter data into the web-based system via an internet browser. After award, Contractor will receive instructions to set up their account and enter required subcontractor data. Contractor must require each of its subcontractors to enter required payment verification information into the web-based system. Subcontractors with lower tier subcontractors must require lower tier subcontractors to enter required payment data into the web-based system. Failure of Contractor or its subcontractors to enter required information on a timely basis may result in delay of payment by Omnitrans and may subject Contractor to withholding of payments or penalties for noncompliance.

If Omnitrans approves in writing the use of a form instead of the web-based system to report monthly payments to subcontractors, Contractor will complete and submit the following exhibit at the times specified:

ATTACHMENT G

Disadvantaged Business Enterprise (DBE) Program Requirements

Summary Subcontractors Paid Monthly Report and Payment Verification: (Requires Omnitrans Approval in Writing).

The Contractor will be required to complete and submit a Form 103 to Omnitrans designee by the 15th of each month until completion of the contract to facilitate reporting of all subcontractor payments, including DBE firms, following the first month of contract activity. The Contractor will report the total dollar value paid to all subcontractors, including DBEs, for the applicable reporting period. The Contractor will also report the subcontractor's scope of work and the total subcontract value of commitment for each subcontractor reported.

Upon completion of the contract, the Contractor will be required to prepare and submit to Omnitrans a "Summary Subcontractor Paid Monthly Report and Payment Verification" (Form 103) clearly marked "Final" to facilitate reporting and capturing actual subcontractor payments. Contractor will complete and submit a Final Form 103 whether or not DBEs were utilized in the performance of the contract.

Contractor is advised not to report the participation of DBEs toward the Contractor's race-neutral DBE attainment until the amount being counted has been paid to the DBE.

Contractor is responsible for providing subcontractor's proof of DBE Certification.

Contractor and subcontractors are subject to periodic audits by Omnitrans and or their designated representative. Program audits serve as a part of Omnitrans assessing program compliance. The audit may include comprehensive review of program related forms, documents and procedures, including but not limited to site visits. The information presented for review shall be provided in an auditable manner.

VI. DBE Eligibility and Commercially Useful Function Standards

- a. A DBE must be a small business concern as defined pursuant to Section 3 of the U.S. Small Business Act and relevant regulations promulgated pursuant thereto.
- b. A DBE may participate as a prime contractor, subcontractor, joint venture partner with a prime or subcontractor, vendor of material or supplies, or as a trucking company.
- c. A DBE joint venture partner must be responsible for specific contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- d. A DBE must perform a commercially useful function in accordance with 49 CFR 26.55 (i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.) A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce to presume it is performing a commercially useful function.
- e. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources:
 1. The CUCP website, accessed at <https://dot.ca.gov/programs/business-and-economic-opportunity/dbe-search>.

ATTACHMENT G
Disadvantaged Business Enterprise (DBE) Program Requirements

2. The CUCP DBE Directory, which may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, CA 95815; Telephone (916) 445-3520.

VII. DBE Crediting Provisions

When a DBE is proposed to participate in the contract, either as a Prime Contractor or Subcontractor, only the value of the work proposed to be performed by the DBE with its own forces may be counted toward race-neutral DBE participation. If the Contractor is a DBE joint venture participant, only the DBE proportionate interest in the joint venture will be counted.

- a. If a DBE intends to subcontract part of the work of its subcontract to a lower tier Subcontractor, the value of the subcontracted work may be counted toward race-neutral DBE participation only if the DBE Subcontractor is a certified DBE and actually performs the work with their own forces. Services subcontracted to a non-DBE firm may not be credited toward the prime Contractor's race-neutral DBE attainment.
- b. Contractor is to calculate and credit participation by eligible DBE vendors of equipment, materials, and suppliers toward race-neutral DBE attainment, as follows:
 1. Sixty percent (60%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a regular dealer; or
 2. One hundred percent (100%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a DBE manufacturer.
- c. The following types of fee or commissions paid to DBE Subcontractors, Brokers, and Packagers may be credited toward the prime Contractor's race-neutral DBE attainment, provided that the fee or commission is reasonable, and not excessive, as compared with fees or commissions customarily allowed for similar work, including:
 1. Fees and commissions charged for providing bona fide professional or technical services, or procurement of essential personnel, facilities, equipment, materials, or supplies required in the performance of the Contract;
 2. Fees charged for delivery of material and supplies (excluding the cost of materials or supplies themselves) when the licensed hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the material and supplies;
 3. Fees and commissions charged for providing any insurance specifically required in the performance of the Contract.
- d. Contractor may count the participation of DBE trucking companies toward race-neutral DBE attainment, as follows:
 1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.
 2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

ATTACHMENT G

Disadvantaged Business Enterprise (DBE) Program Requirements

4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
6. For purposes of this paragraph, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
7. If the Contractor listed a non-certified DBE 1st tier Subcontractor to perform work on this contract, and the non-certified DBE subcontractor subcontracts a part of its work or purchases materials and/or supplies from a lower tier DBE certified Subcontractor or Vendor, the value of work performed by the lower tier DBE firm's own forces can be counted toward race-neutral DBE participation on the contract.

VIII. Performance of DBE Subcontractors

DBE subcontractors listed by the Prime Contractor in its "DBE Race-Neutral Participation Listing" submitted at the time of proposal submission or added during performance of the contract will perform the work and supply the materials for which they are listed, unless the Contractor has received prior written authorization from Omnitrans to perform the work with other forces or to obtain the materials from other sources.

The Contractor will provide written notification to Omnitrans in a timely manner of any changes to its anticipated DBE participation. This notice should be provided prior to commencement of that portion of the work and the Prime Contractor shall demonstrate good faith efforts in continuing doing business with DBE's.

Contractor cannot fully or partially terminate or substitute a DBE subcontractor without good cause and prior written consent from Omnitrans. This includes, but is not limited to, instances in which a prime seeks to perform work originally designated for a DBE with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm. If the Contractor fails to obtain written consent, the Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE(s). Contractor shall exercise good faith efforts to replace the original DBE subcontractor with another DBE firm for at least the same amount remaining on the original DBE's subcontract.

IX. Additional DBE Subcontractors

In the event Contractor identifies additional DBE subcontractors or suppliers not previously identified by Contractor for race-neutral DBE participation under the contract, Contractor will notify Omnitrans by submitting the form "DBE Race-Neutral Participation Listing" to enable Contractor and Omnitrans to capture all race-neutral DBE participation.

ATTACHMENT G

Disadvantaged Business Enterprise (DBE) Program Requirements

X. DBE Certification Status

If a listed DBE subcontractor is decertified during the life of the project, the decertified subcontractor will notify the Contractor in writing with the date of decertification. The Contractor will furnish the written documentation to Omnitrans in a timely manner.

XI. Contractor's Assurance Clause Regarding Non-Discrimination

In compliance with State and Federal anti-discrimination laws, the Contractor will affirm that they will not exclude or discriminate on the basis of race, color, national origin, or sex in consideration of contract award opportunities. Further, the Contractor will affirm that they will consider, and utilize subcontractors and vendors, in a manner consistent with non-discrimination objectives.

Contractor (and each subcontract the Contractor signs with a subcontractor) must include the following assurance: Contractor or subcontractor 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 DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- a. Withholding monthly progress payments;
- b. Assessing sanctions;
- c. Liquidated damages; and/or
- d. Disqualifying the contractor from future bidding as non-responsible.

XII. Prompt Payment

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

ATTACHMENT G

Disadvantaged Business Enterprise (DBE) Program Requirements

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.

XIII. Records Retention

Prime Contractor shall maintain all DBE program records, including a thorough and updated bidder's list.

Omnitrans requires prime contractors to maintain records of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for Omnitrans' financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of Omnitrans or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

XIV. Bidders List

The U.S. Department of Transportation (DOT) requires Omnitrans to maintain a "Bidders List" containing information about all firms (DBE and non-DBE) that bid, propose or quote on Omnitrans' DOT-assisted contracts, in accordance with 49 CFR Part 26.11, for use in the Omnitrans' overall triennial DBE goal-setting process. Therefore, the Contractor shall provide at a minimum, the following requested information for every firm who submitted a quote, bid, or proposal, including the primary Contractor, whether successful or unsuccessful in their attempt to obtain a contract:

- a. Firm name
- b. Firm address
- c. Status of DBE or non-DBE
- d. Age of the business
- e. Range of annual gross receipts for the last year

A Bidders List form is attached for completion by Contractor. It is the responsibility of the Contractor to verify accuracy of information submitted by each subcontractor. The Bidders List content will not be considered in evaluating the bid/proposal or determining award of the contract.



CONTRACT AGREEMENT

between

FLEMING ENVIRONMENTAL INC.
1372 E. Valencia Drive
Fullerton, CA 92831

(hereinafter "CONTRACTOR")
Telephone: (714) 871-2800
Email: tfleming@flemingenvironmental.com

Remit Address:
FLEMING ENVIRONMENTAL INC.
P.O. BOX 6130
FULLERTON CA 92834-6130

And

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

CONTRACT DOCUMENTS

CONTRACT NO. MNT21-12

UNDERGROUND AND ABOVE GROUND STORAGE TANK TESTING AND REPAIRS

Contract Amount: \$90,425

Omnitrans Project Manager:

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

Contract Administrator:

Name: Frank Holland
Title: Sr. Contract Administrator
Telephone: (909) 379-7186
Email: frank.holland@omnitrans.org



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ATTACHMENT A – SCOPE OF WORK

ATTACHMENT B - REGULATORY REQUIREMENTS

ATTACHMENT C – PRICING

ATTACHMENT D – PROHIBITED WEAPONS IN THE WORKPLACE POLICY 707

ATTACHMENT E – PREVAILING WAGES & LABOR PROVISIONS

This Agreement is made and entered into as of this 1 day of October 2020, by and between Omnitrans (hereinafter referred to as "OMNITRANS") and (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 September 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. The "maximum term" of this Agreement shall be the period extended from October 1, 2023 through September 30, 2025, which period encompasses the Initial Term and the Option Year One and Option Year Two.

3. CONTRACT OPTIONS

- A. Omnitrans will have the unilateral right in the contract by which, for a specified time, Omnitrans may elect to purchase additional services called for by the contract or may elect to extend the term of the contract. The requirements below apply:
- 1) Any options that were requested by Omnitrans and/or contained in the Contractor's BID 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.

Testing and Inspection Services.....\$28,325

Parts and Repairs.....\$62,100

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Ninety Thousand Four Hundred Twenty Five Dollars (\$90,425), 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
- Purchase Order Number
- Invoice number
- Description of delivery/service
- Delivery Date/date of service
- 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, timecards, employment records or other records relating to this Agreement. Such material, including all pertinent cost, accounting, financial records, and proprietary data must be kept and maintained by CONTRACTOR for a period of three (3) years after completion of this Agreement unless OMNITRANS' written permission is given to CONTRACTOR to dispose of material prior to this time.

7. NOTIFICATION

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

To OMNITRANS:

To CONTRACTOR:

Omnitrans
1700 West Fifth Street
San Bernardino, CA 92411
Attn: Frank Holland
Frank.holland@omnitrans.org

Fleming Environmental, Inc.
1372 E. Valencia Drive
Fullerton, CA 92831
Attn: Terry L. Fleming Jr.
tfleming@flemingenvironmental.com

8. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES

A. OMNITRANS' Project Manager

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

Project Manager: Mark Montgomery, Facilities Manager

- a. Except as expressly specified in this Agreement, the Contracting Officer may exercise any powers, rights and/or privileges that have

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.

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

<u>Name</u>	<u>Role</u>
<u>Terry L. Fleming</u>	<u>President</u>
<u>Patty Fleming</u>	<u>Project and Compliance Coordinator</u>
<u> </u>	<u> </u>

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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		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.

1. For any claims related to this project, Contractor's insurance coverage shall be primary insurance as respects Omnitrans, its officers, officials, employees, agents, and volunteers. Any insurance and/or deductibles and/or self-insured retentions or self-insured programs maintained by Omnitrans, its officers, officials, employees, agents, and volunteers shall be excess of

Contractor's insurance and shall not be construed as contributory.

2. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to Omnitrans.

b. Workers' Compensation

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

c. Care, Custody, and Control

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

4) Acceptability of Insurers

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

5) Verification of Coverage

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

6) Subcontractors

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

7) **Notification of Terminated Insurance**

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

B. MINIMUM INSURANCE COVERAGE

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

- 1) ☒ **Commercial General Liability including Products/Completed Operations:** \$1,000,000; per occurrence for bodily and property damage liability and \$2,000,000 aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- 2) ☒ **Automobile Liability:** \$1,000,000; per occurrence for bodily and property damage liability and aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- 3) ☒ **Errors and Omissions Liability:** \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$3,000,000 aggregate or,
- 4) ☐ **Professional Liability:** \$1,000,000; per occurrence and aggregate.
- 5) ☒ **Workers' Compensation:** statutory limits or,
- 6) ☐ **Self Insurance Program:** a State Approved program in an amount and form that meets all applicable requirements of the Labor Code of the State of California.
- 7) ☒ **Employer's Liability:** \$1,000,000; per occurrence.
- 8) ☐ **Environmental Liability:** \$1,000,000; per occurrence and aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- 9) ☐ **Umbrella Policy:** \$4,000,000; per occurrence and aggregate Additional coverage for the above policies, *Omnitrans Additional Insured.*
- 10) ☐ **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 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

- A. In the event OMNITRANS rightfully obtains copies of Proprietary Data under the terms of the separate License Agreement and Escrow Agreement that govern rights in Documentation, Software and Intellectual Property created and/or developed by Contractor, its Third Party Software Contractors and its Suppliers as part of the Project, any derivative works and associated documentation created by or on behalf of OMNITRANS by Permitted Programmers (as defined in the License Agreement) shall be the sole and exclusive property of OMNITRANS (collectively, "OMNITRANS Intellectual Property"), and OMNITRANS may use, disclose and exercise dominion and full rights of ownership, in any manner in OMNITRANS Intellectual Property in connection with the use, operation and maintenance of a transportation system administered by OMNITRANS. No use of OMNITRANS Intellectual Property shall be made for any purpose other than in conjunction with a transportation system administered by CONTRACTOR, and OMNITRANS shall not sell, lease, rent, give away or otherwise disclose any OMNITRANS

Intellectual Property to any outside third party other than Permitted Programmers. To the extent there may be any question of rights of ownership or use in any OMNITRANS Intellectual Property, Contractor shall require all of its subcontractors and suppliers (including without limitation its Third Party Software Contractors) to assign to OMNITRANS, all worldwide right, title and interest in and to all OMNITRANS Intellectual Property in a manner consistent with the foregoing terms of this paragraph. Contractor shall execute any documents as OMNITRANS may from time to time reasonably request to effectuate the terms of this paragraph.

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

21. WORK FOR HIRE

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

22. SUBMITTAL OF CLAIMS BY CONTRACTOR

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

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

23. EQUAL OPPORTUNITY

CONTRACTOR shall not discriminate against, or grant preferential treatment to, any individual or group, or any employee or applicant for employment because of race, age, religion, color, ethnicity, sex, national origin, ancestry, physical disability, mental disability, political affiliation, sexual orientation, marital status or other

status protected by law. CONTRACTOR shall take action to ensure that applicants and employees are treated without regard to the above.

24. STANDARD OF PERFORMANCE

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

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

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

26. DISQUALIFYING POLITICAL CONTRIBUTIONS

In the event of a proposed amendment to this Agreement, CONTRACTOR shall provide prior to the execution of such amendment, a written statement disclosing any contribution(s) of \$250 or more made by CONTRACTOR or its subcontractor(s) to Omnitrans Board Members/Alternates or employees within the

preceding twelve (12) months of the date of the proposed amendment. Applicable contributions include those made by any agent/person/entity on behalf of CONTRACTOR or subcontractor(s).

27. COMPLIANCE WITH LAW

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

28. 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.

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-MNT21-12 and any and all of its Addenda, Appendices, Exhibits and Attachments; and (3) CONTRACTOR's Bid dated July 30, 2020 and its Appendices, Exhibits, 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.

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

OMNITRANS

FLEMING ENVIRONMENTAL INC.

Erin Rogers
CEO/General Manager

Terry Fleming Jr.
President

Date

Date

Federal Tax I.D. No. 33-0791479

DP _____

ATTACHMENT A - SCOPE OF WORK
MNT21-12
UNDERGROUND AND ABOVE GROUND STORAGE TANK TESTING AND REPAIRS

1. SCOPE OF WORK

A. Furnish all necessary labor and equipment needed to schedule and perform annual monitor certifications, all California Air Resources Board (CARB) required Vapor Recovery Testing, and SB - 989 Secondary Containment testing. Ensure that each system is tested in compliance with all current Certified Unified Program Agency (CUPA), South Coast Air Quality Management District (SCAQMD), CARB and State Water Resources Control Board (SWRCB) regulations. Coordinate testing with local CUPA and SCAQMD agencies and ensure that results are submitted to these agencies as required.

B. Provide services for repairs, modifications, and maintenance of underground storage tank (UST) systems, and above ground storage tank (AST) systems in accordance with all Local, State, and Federal regulations. These services will be on an as needed basis to correct deficiencies found during annual or triennial testing, and/or for issues that arise during normal operations.

C. **Contractor Qualifications:**

- 1) Exhibit A- provides the licensing & certification requirements per the County of San Bernardino Fire Department Hazardous Materials Division.
- 2) Contractor has a minimum of five (5) years experience in performing annual monitoring certification, vapor recovery testing, SB 989 secondary testing, and UST/AST equipment repairs.

D. **SB-989 Secondary Containment & Overfill Prevention Inspection/Testing:**

- 1) Exhibit B - shows the number and types of items included and the future due dates.

E. **Test water provisions and disposal requirements:**

- 1) Annual Spill Bucket:
Test water and disposal responsibilities shall be provided by Omnitrans.
- 2) Secondary Containment Testing:
Test water and disposal responsibilities shall be provided by contractor during this year, for both the spill buckets and secondary containment testing.

F. The work required above shall be conducted at three different locations. The locations and associated equipment are listed below:

East Valley Division
1700 West 5th Street
San Bernardino CA 92411

ATTACHMENT A - SCOPE OF WORK
MNT21-12
UNDERGROUND AND ABOVE GROUND STORAGE TANK TESTING AND REPAIRS

1 Above Ground Storage Tank (10,000 Gallon)

- 1 - Unleaded Dispenser with One Nozzle (1 UDC)
- 1- Healy /9000-2 Mini-Jet Stage II Vapor Recovery
- 1 - Omntec/OEL8000II Leak Detection & Monitoring System with 6 sensors.

West Valley Division

4748 Arrow Highway
Montclair CA 91763

11 Underground Storage Tank's (Ranging from 500 – 10,000 Gallons)

- 1 Unleaded Dispenser with One Nozzle (1 UDC)
- 1- Healy Phase II EVR System
- 1 - Veeder Root TLS-350 Monitor with 19 Liquid Sensors
- 1 - Veeder Root TLS-350 Monitor with 10 Liquid Sensors
- 11 - In Tank Gauging Probes
- 1 - Dispenser Containment Sensor
- 1 - Mechanical Line Leak Detector

"I" Street Division

234 South "I" Street
San Bernardino CA 92410

2 Underground Storage Tank's (4,000 Gallon Each)

- 2 - Unleaded Dispensers with One Nozzle Each (2 UDC's)
- 1- Healy Phase II EVR System
- 1 - Veeder Root TLS-300C with 6 Liquid Sensors
- 2 - In Tank Gauging Probes

2. GENERAL REQUIREMENTS

- A. It is the Contractor's responsibility to coordinate the work to minimize conflicts and optimize efficiency.
- B. If and when it should be necessary for the Contractor to impact day-to-day operations of Omnitrans functions in order to pursue the work, the Contractor shall furnish adequate notice to Omnitrans and avoid, minimize, or circumvent such impacts. Omnitrans reserves the right to assess and anticipate such impacts and the right to stop or postpone the work until a mutually satisfactory time and means can be agreed upon.

ATTACHMENT A - SCOPE OF WORK

MNT21-12

UNDERGROUND AND ABOVE GROUND STORAGE TANK TESTING AND REPAIRS

- C. Contractor shall not stop or park any of his/her vehicles in such a manner to prevent the timely entrance and exit of Omnitrans coaches from the parking area. Our customers expect prompt service, and our service is scheduled on a tight timeline, and Omnitrans will not accept any delays.
- D. All work is to comply with all applicable state and city code requirements.
- E. Contractor shall ensure that all of his operations strictly adhere to all Federal, State, and Local safety and environmental laws and regulations. Omnitrans reserves the right to correct any unsafe practices by the Contractor's employees or stop work until the Contractor makes the appropriate corrections.

3. WORKPLACE SAFETY

- A. Contractor shall ensure that all of their operations strictly adhere to all Federal, State, and Local safety and environmental laws and regulations. Omnitrans, in accordance with the dual employer provision, reserves the right to correct unsafe practices by the contractor's employees, or to stop work until the contractor makes the necessary corrections. In addition:
- B. **Smoking**
Omnitrans uses designated areas for smoking. Smoking is not allowed at any time in the bus yard, on or in any buildings, or by the entrances to any buildings. Smoking by employees of the contractor, or his sub-contractors, shall not create a hazardous condition for themselves, co-workers, or employees and property of Omnitrans.
- C. **Eye Protection**
 - 1) Per Omnitrans eye protection policy, ANSI Z87 approved eye protection shall be worn by all persons while conducting business outside the boundaries of the established "green zone". The policy also requires that eye protection be utilized if hazardous work is being conducted within the "green zone". The contractor shall ensure that all of its employees have been provided eye protection that meets the requirement.
 - 2) The project manager, or his designee, reserves the right to stop the contractor's work in the event that a contractor employee is in violation, and that work will remain stopped until the violation is corrected.
- D. **Safety Vests**
 - 1) Contractors and their employees working or performing services in outside work zones shall wear ANSI Class 2 Safety Vests. ANSI Class 2 Safety Vests must be worn at all times in the bus yard and in the relief vehicle locations.
 - 2) Safety Vests are not required while in designated, marked with painted green borders Safety Zones on Agency property or while on sidewalks, curbs, or raised pavement.

ATTACHMENT A - SCOPE OF WORK

MNT21-12

UNDERGROUND AND ABOVE GROUND STORAGE TANK TESTING AND REPAIRS

- E. Contractor shall have 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 have expertise in recognition and prevention of hazards in the operations for which they are responsible. 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.
- F. 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.

4. SECURITY & EMERGENCY PREPAREDNESS

Contractor, Sub-Contractors, and other people working on this contract shall ensure the following Security & Emergency Preparedness requirements are met:

- A. Emergency Preparedness
 - 1) Contractor shall ensure that all exit routes are kept free and unobstructed with no material or equipment placed, either permanent or temporary, within the exit route.
 - 2) Aisles, walkways, and emergency exits shall be kept clear for egress.
 - 3) First aid supplies shall be readily available for contractors, sub-contractors, etc.
- B. Security
 - 1) If Contractor is issued an Agency Contractor's badge it shall be worn so that it is visible to others.
 - 2) Secure doors shall not be propped open unless authorized by the Safety and Security Office.
 - 3) If any security equipment (card readers, CCTV cameras, etc.) are rendered nonfunctioning either by accident or due to project scope, the Safety and Security Office shall be immediately contacted.
 - 4) Suspicious Packages, Suspicious Objects, Suspicious People, Suspicious Photography, etc. shall be immediately reported to an on duty Omnitrans Security Officer or a member of the Safety and Security Office.
 - 5) Sensitive Security Information (SSI) identified by Omnitrans - Contractors' working with Omnitrans SSI, shall follow Omnitrans SSI Procedure 803-16.
 - 6) Photographing of security equipment is not permitted without the written consent of the Safety and Security Office.

**** End of Scope of Work****

EXHIBIT A

UST Contractor Licensing & Certifications

The following licenses and certifications are required to schedule inspections, certify UST systems or to modify/install UST components/systems:

TYPE OF SERVICE	CSLB A LICENSE <u>OR</u> TANK TESTER LICENSE <u>AND</u>	INTERNATIONAL CODE COUNCIL <u>AND</u>	MANUFACTURER CERTIFICATION
MONITORING CERTIFICATION	EITHER	ICC TECHNICIAN	FOR UST EQUIPMENT CERTIFIED
SECONDARY CONTAINMENT (SB 989)	EITHER	ICC TECHNICIAN	INCON (FRANKLIN FUEL) OR ANY TESTER USED
NON-EVR UST MODIFICATION	CSLB	ICC INSTALLER/RETROFITTER	FOR UST COMPONENTS REPAIRED/USED
REPLACEMENT OR UPGRADE OF MONITORING EQUIPMENT	EITHER	ICC TECHNICIAN	FOR SPECIFIC MONITORING EQUIPMENT
PRECISION LINE/UST TEST	TANK TESTER/ LINE TESTER	ICC TECHNICIAN	FOR TESTING EQUIPMENT/ METHOD USED
UST INSTALL	CSLB	ICC INSTALLER/RETROFITTER	FOR EACH UST COMPONENT
UST REMOVAL	CSLB	WITH "HAZ A" ENDORSEMENT	N/A

1. Contractors CANNOT share CSLB or Tank Tester licenses.
2. Contractor must provide required licensing at the time of application.
3. LOOK at the CSLB to ensure that it is indeed for the company they represent.
4. Permit modification/installation applications from contractors without CSLB will be rejected.
5. Contractor may leave a valid/current copy of their CSLB on file with us for reference.
It is the Contractor's responsibility to ensure that their licenses are up to date, valid and available for review upon request during both plan check and site inspections.
6. Sub-contractors shall be independently licensed and certified for their proposed scope of work.

Look up California contractor's licenses at: <http://www.cslb.ca.gov>

Check the Requirements of the Tank Tester Licensing Program at:

http://www.waterboards.ca.gov/water_issues/programs/ust/tank_testers/

The Tank Tester/Line Tester List is there as: [List of Licensed Tank Testers \(LG 105\)](#)

*Tank Tester List includes Line/Pipe Test approval also.

EXHIBIT A

EVR Upgrade Licensing Matrix

TYPE OF EVR UPGRADE	CSLB LICENSE OR TANK TESTER LICENSE AND	INTERNATIONAL CODE COUNCIL AND	MANUFACTURER CERTIFICATION
HEALY TANK ONLY	CSLB A W/HAZ	VAPOR RECOVERY INSTALLER	FRANKLIN FUELS/HEALY INSTALL
VEEDER ROOT (VR) ISD	CSLB A W/HAZ	VAPOR RECOVERY INSTALLER, SERVICE TECH	VEEDER ROOT (VR) ISD INSTALL AND TECHNICIAN LEVEL 2/3 OR 4
INCON ISD	CSLB A W/HAZ	VAPOR RECOVERY INSTALLER, SERVICE TECH	FRANKLIN FUELS INCON INSTALL CERT, INCON TMS TECH
VR ISD W/HEALY	CSLB A W/HAZ	VAPOR RECOVERY INSTALLER, SERVICE TECH	FF – HEALY VR ISD VR TECH 2/3 OR 4
VR CARBON CANISTER VAPOR POLISHER (CCVP) – NO ISD	CSLB A W/HAZ	VAPOR RECOVERY INSTALLER, SERVICE TECH	VR TECH 2/3 OR 4 VR CCVP INSTALL
VR CARBON CANISTER VAPOR POLISHER (CCVP) – WITH ISD	CSLB A W/HAZ	VAPOR RECOVERY INSTALLER, SERVICE TECH	VR TECH 2/3 OR 4 VR - CCVP INSTALL VR - ISD INSTALL
VST VAPOR PROCESSOR	CSLB A W/HAZ	VAPOR RECOVERY INSTALLER, SERVICE TECH	VST INSTALL CERT VR TECH 2/3 OR 4

Some EVR related manufacturer certifications are available online at:

<http://www.evrhome.org/contractors.htm>

Look up International Code Council UST certifications at:

<http://www.iccsafe.org/certification/ust-ast/>

*CLICK ON YELLOW BOX TO SEARCH BY NAME

If any other UST work is completed along with the EVR upgrade (piping work, UDC replacement, etc), additional licensing and certifications will be required to complete the plan review. It is the project proponent's responsibility to furnish all applicable licensing and certifications at the time of application.

EXHIBIT B
**Omnitrans SB 989 Secondary Containment and Overfill
Prevention Testing**

	OMNITRANS FACILITY LOCATIONS		
	Montclair 4748 Arrow Hwy	San Bernardino 234 S. I - Street	Qty
Next Due Date(s)	07/2020 07/2023	10/2020 10/2023	
Tank Interstitial Tests	11	2	13
Tank Sump Tests	16	4	20
Transition Sumps	2		2
Under Dispenser Tests	1	2	3
Secondary Piping Tests	12	2	14
Spill Bucket Tests	12	4	16

	Montclair 4748 Arrow Hwy	San Bernardino 234 S. I - Street	Qty
Next Due Date(s)	10/2021 10/2024	10/2021 10/2024	
Overfill Prevention Inspection	11	2	13

Attachment B

REGULATORY REQUIREMENT

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REGULATORY REQUIREMENTS

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

Required Clauses for All FTA-Assisted Third-Party Contracts and Subcontracts

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(I), 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.

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

- (c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Contractor shall comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, Contractor shall comply with any implementing requirements FTA may issue.
- (d) Contractor shall include these requirements in each subcontract, modified only if necessary to identify parties, as required by Federal regulations.

RR-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 Omnitrans' DBE Program 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.
- 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

DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

Background and Application

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

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

Clause Language

Davis-Bacon and Copeland Anti-Kickback Acts

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

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

Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs

reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

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

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

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

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

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

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

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and

individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training

Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

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

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

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

RR-08

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

Applicability to Contracts

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

Flow Down

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

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

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

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

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

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

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

RR-09

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-010

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-011

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.

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-012

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-013

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

Applicability to Contracts

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

Flow Down

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

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

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

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

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

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

RR-014

CARGO PREFERENCE*

A. Applicability

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

B. USE OF UNITED STATES FLAG VESSELS

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

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

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

RR-015

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT *

A. Applicability

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

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

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

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

RR-016

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. 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-017

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-018
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-019
RECYCLED PRODUCTS

A. Applicability

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

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

RR-020
ADA ACCESS

A. Applicability

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

B. Access Requirements for Persons with Disabilities

Contractor shall comply with:

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

3. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act;
4. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act; and
5. All applicable requirements of the following regulations and any subsequent amendments thereto:
 - (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
 - (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
 - (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
 - (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
 - (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
 - (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
 - (7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
 - (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
 - (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194; and
 - (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609;
 - (11) Any implementing requirements FTA may issue.

RR-021

ADMINISTRATIVE CODE *

A. Applicability

This Article applies to all contracts.

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

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

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

C. Campaign Contributions

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

RR-022

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-023

WHISTLEBLOWER REQUIREMENTS *

A. Applicability

This Article applies to all contracts.

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

RR-024

PUBLIC RECORDS ACT *

A. Applicability

This Article applies to all contracts.

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

RR-025

PRIVACY ACT - 5 U.S.C. 552

Applicability to Contracts

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

Flow Down

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

Model Clause/Language

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

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

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

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

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

RR-026

VETERANS PREFERENCE

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

END OF REGULATORY REQUIREMENTS

ATTACHMENT C - PRICING

MNT21-12

UNDERGROUND AND ABOVE GROUND STORAGE TANK TESTING AND REPAIRS

Item Number	Section	Description	Unit	Quantity	Fleming Environmental Inc.
1	BASE YEAR 1	East Valley Division	Year	1	\$750.00
2	BASE YEAR 1	West Valley Division	Year	1	\$4,000.00
3	BASE YEAR 1	I Street Division	Year	1	\$4,750.00
				Subtotal	\$9,500.00
4	BASE YEAR 2	East Valley Division	Year	1	\$775.00
5	BASE YEAR 2	West Valley Division	Year	1	\$3,375.00
6	BASE YEAR 2	I Street Division	Year	1	\$2,125.00
				Subtotal	\$6,275.00
7	BASE YEAR 3	East Valley Division	Year	1	\$800.00
8	BASE YEAR 3	West Valley Division	Year	1	\$9,500.00
9	BASE YEAR 3	I Street Division	Year	1	\$2,250.00
				Subtotal	\$12,550.00
10	OPTION YEAR 1	East Valley Division	Year	1	\$825.00
11	OPTION YEAR 1	West Valley Division	Year	1	\$4,450.00
12	OPTION YEAR 1	I Street Division	Year	1	\$5,500.00
				Subtotal	\$10,775.00
13	OPTION YEAR 2	East Valley Division	Year	1	\$850.00
14	OPTION YEAR 2	West Valley Division	Year	1	\$3,750.00
15	OPTION YEAR 2	I Street Division	Year	1	\$2,400.00
				Subtotal	\$7,000.00
				Total	\$46,100.00
16	HOURLY RATES AS NEEDED REPAIRS	Standard Rate Base Year 1	Hour	1	\$125.00
17	HOURLY RATES AS NEEDED REPAIRS	Overtime Rate Base Year 1	Hour	1	\$155.00
18	HOURLY RATES AS NEEDED REPAIRS	Holiday Rate Base Year 1	Hour	1	\$185.00
19	HOURLY RATES AS NEEDED REPAIRS	Standard Rate Base Year 2	Hour	1	\$130.00
20	HOURLY RATES AS NEEDED REPAIRS	Overtime Rate Base Year 2	Hour	1	\$160.00
21	HOURLY RATES AS NEEDED REPAIRS	Holiday Rate Base Year 2	Hour	1	\$190.00
22	HOURLY RATES AS NEEDED REPAIRS	Standard Rate Base Year 3	Hour	1	\$135.00
23	HOURLY RATES AS NEEDED REPAIRS	Overtime Rate Base Year 3	Hour	1	\$165.00
24	HOURLY RATES AS NEEDED REPAIRS	Holiday Rate Base Year 3	Hour	1	\$195.00
25	HOURLY RATES AS NEEDED REPAIRS	Standard Rate Option Year 1	Hour	1	\$140.00
26	HOURLY RATES AS NEEDED REPAIRS	Overtime Rate Option Year 1	Hour	1	\$170.00
27	HOURLY RATES AS NEEDED REPAIRS	Holiday Rate Option Year 1	Hour	1	\$200.00
28	HOURLY RATES AS NEEDED REPAIRS	Standard Rate Option Year 2	Hour	1	\$145.00
29	HOURLY RATES AS NEEDED REPAIRS	Overtime Rate Option Year 2	Hour	1	\$175.00
30	HOURLY RATES AS NEEDED REPAIRS	Holiday Rate Option Year 2	Hour	1	\$205.00



PERSONNEL POLICY MANUAL

POLICY 707 PAGE 1 OF 6

SUBJECT
PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS
BOARD OF DIRECTORS

DATE: June 7, 2017

I. Purpose

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

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

II. Scope

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

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

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

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

III. Procedure

A. COMMUNICATION OF POLICY

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

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



PERSONNEL POLICY MANUAL

POLICY 707 PAGE 2 OF 6

SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS
BOARD OF DIRECTORS

DATE: June 7, 2017

B. PROHIBITED CONDUCT

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

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

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

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

C. SEARCH

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

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

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

D. DISCIPLINE

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



PERSONNEL POLICY MANUAL

POLICY 707 PAGE 3 OF 6

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up to and including separation of employment.

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

E. REPORT OF VIOLATIONS

1. Employee Violations

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

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

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

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

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

2. Visitor Violations

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



PERSONNEL POLICY MANUAL

POLICY 707 PAGE 4 OF 6

SUBJECT PROHIBITING WEAPONS IN THE WORKPLACE

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

F. FALSE REPORTS

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

G. ROLES AND RESPONSIBILITIES

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

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

H. SAFETY FIRST

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

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

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

I. ANTI-RETALIATION PROVISION

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



PERSONNEL POLICY MANUAL

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J. DEFINITIONS

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

- A firearm, whether loaded or unloaded, from which a shot may be discharged including but not limited to handguns, pistols, revolvers, shotguns, rifles, and bb guns;
- A gun that can discharge a shot or a projectile by means of an explosive or gas, or compressed air;
- A device designed to be used as a weapon, from which can be expelled a projectile by the force of any explosion or force of combustion;
- Any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
- Any destructive device;
- Any device designed as a weapon and capable of producing great bodily harm, including but not limited to, stun guns, stun batons;
- An electric weapon such as a taser gun;
- Any combustible or flammable liquid, or other substance, device, or instrumentality that, in a manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or any fire that is used to produce death or great bodily harm;
- Any knife that is carried with intention or calculation to produce death or great bodily harm having a blade length in excess of four (4) inches, the blade of which is fixed or is capable of being fixed in an unguarded position by the use of one or two hands. Switchblades are specifically prohibited. (Knives intended to be used as eating utensils, and stored or maintained in office kitchens or lunchrooms do not represent a violation of this policy.)

2. **Office:** All permanent facilities, all mobile facilities, all leased facilities, and any facility designated as an office by the agency.

3. **Parking lot:** All lots at permanent facility, park and rides, lots at project sites, any lot that the agency designates as a parking lot that is not at a permanent facility or project site.

4. **Agency vehicle:** All agency-owned buses/vehicles, all agency-leased buses/vehicles, all agency-rental buses/vehicles, and all personal vehicles for which the owner receives a vehicle allowance, all personal vehicles where the owner receives reimbursement for mileage.



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

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

SIGNS

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

ATTACHMENT E
PREVAILING WAGES / LABOR PROVISIONS

A. PREVAILING WAGES

This project is funded under a financial assistance contract by the U.S. Department of Transportation and is subject to all conditions of the Davis-Bacon Act (40 U.S.C. 276a) and the Labor Code of the State of California commencing in Section 1770 et. seq. It is required that all mechanics and laborers employed or working at the site be paid not less than the current basic hourly rates of pay and fringe benefits. Wage schedules are attached or available on the internet at:

www.dir.ca.gov/DLSR/statistics_research.html

and

<https://beta.sam.gov/>

Bidders shall utilize the relevant prevailing wage determinations in effect on the first advertisement date of the Invitation for Bids. In the event there are any differences between the minimum wage rates as determined by the United States Secretary of Labor and those determined by the State of California, the highest rate **MUST BE PAID**.

B. LABOR PROVISIONS

a. Prevailing Wages

- 1) Contractor shall comply with all applicable requirements of Division 2, Part 7, Chapter 1 of the Labor Code and all applicable federal requirements respecting prevailing wages. If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the wage rates determined by the Director of the Department of Industrial Relations (DIR) for similar classifications of labor, the Contractor and subcontractors shall not pay less than the higher wage rate. The DIR will not accept lower state wage rates not specifically included in the Federal minimum wage determination.
- 2) The Contractor and each subcontractor shall forfeit as a penalty to Omnitrans not more than Two Hundred Dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate for any work done by him, or by any subcontract under him, in violation of the provisions of the Labor Code. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.
- 3) The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Agreement from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov/dlsr/. In the alternative, the Contractor may view a copy of the prevailing rates of per diem wages upon request to OMNITRANS. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification,

ATTACHMENT E
PREVAILING WAGES / LABOR PROVISIONS

or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project Site. Contractor shall post, at appropriate conspicuous points on the Project Site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

b. Minimum Wages

- 1) All mechanics and laborers employed or working upon the site of the work will be paid unconditionally, and not less often than once a week and without subsequent deduction or rebate on any account, the full amounts due at time of payment computed at wage rates not less than those specified in the General Wage Determinations referenced in this section regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics; and the wage determination decision shall be posted by the Contractor at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or cost reasonably anticipated under the Labor Code of the State of California on behalf of laborers or mechanics are considered wages paid by such Laborers or mechanics. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.
- 2) Omnitrans shall require that any class of laborers or mechanics, including apprentices and trainees, which is not listed in the General Wage Determinations and which is to be employed under this Contract, shall be classified conformably to such wage determinations. In the event Omnitrans does not concur in the Contractor's proposed classification or reclassification of a particular class of laborers and mechanics (including apprentices and trainees) to be used, the question, accompanied by the recommendation of Omnitrans, shall be referred to the State Director of Industrial Relations for determination.
- 3) Omnitrans shall require, whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage and the Contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established. In the event the interested parties cannot agree upon cash equivalent of the fringe benefit, the questions, accompanied by the recommendation of Omnitrans, shall be referred to the State Director of Industrial Relations for determination.
- 4) All disputes concerning the payment of wages or the classification of workers under this Agreement shall be promptly reported to Omnitrans.

ATTACHMENT E
PREVAILING WAGES / LABOR PROVISIONS

c. Deductions

In addition to amounts which Omnitrans may retain under other provisions of the Contract Documents Omnitrans may withhold payments due to Contractor as may be necessary to cover:

- 1) Stop Payment Notice Claims.
- 2) Defective work not remedied.
- 3) Failure of Contractor to make proper payments to its subcontractors or suppliers.
- 4) Completion of the Contract if there exists a reasonable doubt that the work can be completed for balance then unpaid.
- 5) Damage to another Contractor or third party.
- 6) Amounts which may be due Omnitrans for claims against Contractor.
- 7) Failure of Contractor to keep the record ("as-built") drawings up to date.
- 8) Failure to provide updates on the construction schedule and/or a recovery schedule if required.
- 9) Site clean-up.
- 10) Failure of the Contractor to comply with requirements of the Contract Documents, including but not limited to Contractor's failure to provide approved complete as-builts prior to filing of Notice of Completion.
- 11) Liquidated damages.
- 12) Legally permitted penalties.
 - i. Omnitrans may apply such withheld amount or amounts to payment of such claims or obligations at its discretion with the exception of subsections (a), (c) and (e) of this Article, which must be retained or applied in accordance with applicable law. In so doing, Omnitrans shall be deemed the agent of Contractor and any payment so made by the Contractor shall be considered as a payment made under contract by Omnitrans to Contractor and Omnitrans shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of the claim or obligations. Omnitrans will render Contractor a proper accounting of such funds disbursed on behalf of the Contractor.
 - ii. Upon completion of the Contract, Omnitrans will reduce the final Contract amount to reflect costs charged to the Contractor, back charges or payments withheld pursuant to the Contract Documents.

ATTACHMENT E
PREVAILING WAGES / LABOR PROVISIONS

- iii. All amounts owing by Contractor to Omnitrans under the Contract shall earn interest from the date on which such amount is owing at the lesser of (i) 10% per annum or (ii) the maximum rate allowable under applicable Governmental Rules.

d. Payrolls and Basic Records

- 1) Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work. Such records will contain the name, address and social security number of each such worker, the correct classification, rates of pay, daily and weekly number of hours worked, deductions made and actual wages paid.
- 2) Pursuant to Labor Code Section 1776, the Contractor and each subcontractor shall maintain weekly certified payroll records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed in connection with the work. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate. Contractor shall also require subcontractor(s) to certify weekly payroll records under penalty of perjury
- 3) The Contractor will submit weekly a copy of all payrolls to Omnitrans as required in these "Labor Provisions" as well as to the Department of Industrial Relations (DIR). See subsection 17, Certified Payroll Compliance Monitoring, in this section. The copy shall be accompanied by a statement signed by the employer or its agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the State Director of Industrial Relations and that the classifications as set forth for each laborer or mechanic conform to the work performed. A submission of the "Weekly Statement of Compliance," which is required under this Contract, shall satisfy this requirement. The prime Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The Contractor will make the records required under the labor standard clauses of the contract available for the inspection by authorized representatives of Omnitrans, and will permit such representatives to interview employees during working hours on the job. In the event of noncompliance with the requirements of this Section, the Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying any item or actions necessary to ensure compliance with this section. Should noncompliance still be evident after such ten (10) day period, the Contractor shall, as a penalty to Omnitrans, forfeit One Hundred Dollars (\$100.00) for each day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of the DIR, such penalties shall be withheld from contract payments

ATTACHMENT E
PREVAILING WAGES / LABOR PROVISIONS

e. Apprentices and Trainees

- 1) Apprentices: Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program as defined in section 1777.5 of the Labor Code of the State of California. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate who is not registered or otherwise employed as stated above, shall be paid the wage rate determined by the State Director of Industrial Relations for the classification of work he actually performed. The Contractor or subcontractor will be required to furnish to Omnitrans or the State Director of Industrial Relations written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman's rate contained in the applicable wage determination).
- 2) Trainees: Except as provided in 29 CFR 5.15, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to or individually registered in a program which has received prior approval, evidenced by formal certification, by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen shall not be greater than that permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The Contractor or subcontractor will be required to furnish the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of his program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- 3) Equal Employment Opportunity: The utilization of apprentices and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR, Part 30.

f. Compliance with Copeland Regulations (29 CFR, Part 3)

The Contractor shall comply with the Copeland Regulations (29 CFR, Part 3) of the Secretary of Labor which is herein incorporated by reference.

ATTACHMENT E
PREVAILING WAGES / LABOR PROVISIONS

g. Overtime Requirements

No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any work week in which he is employed on such work to work in excess of 8 hours a day or 40 hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 8 hours a day or 40 hours in such work week.

h. Violation; Liability for Unpaid Wages

Pursuant to section 1775 of the Labor Code of the State of California, in the event that any workman employed on this public works project is paid less than the amount specified in the General Prevailing Wage Determinations or less than is required, relative to overtime, the Contractor and any subcontractor responsible therefore shall be liable to the affected workman for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the State of California or Omnitrans for liquidated damages. Such liquidated damages shall be computed with respect to each individual workman found to be underpaid and shall be in the amount of \$50 per calendar day that a workman was underpaid.

i. Withholding for Liquidated Damages

Omnitrans may withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for liquidated damages as provided in this section.

j. Final Labor Summary

The Contractor and each subcontractor shall furnish to Omnitrans, upon the completion of the contract, a summary of all employment, indicating for the completed project, the total hours worked and the total amount earned.

k. Final Certificate

Upon completion of the contract, the Contractor shall submit to Omnitrans, with the voucher for a final payment for any work performed under the contract, a concerning wages and classifications for laborers and mechanics, including apprentices and trainees employed on the project, in the following form:

ATTACHMENT E
PREVAILING WAGES / LABOR PROVISIONS

The undersigned, Contractor on

(Contract No.)

hereby certifies that all laborers, mechanics, apprentices and trainees employed by the Contractor or by a subcontractor performing work under the contract on the project have been paid wages at rates not less than those required by the contract provisions, and that the work performed by each such laborer, mechanic, apprentice or trainee conformed to the classifications set forth in the contract or training program provisions applicable to the wage rate paid.

Signature and Title

l. Notice to Omnitrans of Labor Dispute

Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to Omnitrans.

m. Disputes Clause

- 1) All disputes concerning the payment of prevailing wage rates or classifications shall be promptly reported to Omnitrans for its referral to DOT for decision or, at the option of Omnitrans, DOT referral to the Secretary of Labor. The decision of DOT or the Secretary of Labor, as the case may be, shall be final.
- 2) All questions relating to the application or interpretation of the Copeland Act, the Contract Work Hours Standards Act, the Davis-Bacon Act, or Section 13 of the Act shall be sent to the Federal Transit Administration (FTA) for referral to the Secretary of Labor for ruling or interpretation, and such ruling or interpretation shall be final.

n. Convict Labor

In connection with the performance of work under this Contract, the Contractor agrees not to employ any person-undergoing sentence of imprisonment at hard labor. This does not include convicts who are on parole or probation.

o. Insertion in Subcontracts

The Contractor shall set forth in item 1 through 15 of this Section so that all of the provisions of this section will be inserted in all construction subcontracts of any tier, and such other clauses as the Government may by appropriate instructions require.

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p. Certified Payrolls Compliance Monitoring

- 1) This project is subject to monitoring and enforcement by the Department of Industrial Relations (DIR).
- 2) This project is subject to prevailing wages.
- 3) Contractors and subcontractors are obligated to submit certified payroll records utilizing the DIR's eCPR system. You can access additional information regarding the DIR's reporting system by using the following link: <http://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html>.

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"General Decision Number: CA20200026 07/31/2020

Superseded General Decision Number: CA20190026

State: California

Construction Types: Building, Heavy (Heavy and Dredging) and Highway

County: San Bernardino County in California.

BUILDING CONSTRUCTION PROJECTS; DREDGING PROJECTS (does not include hopper dredge work); HEAVY CONSTRUCTION PROJECTS (does not include water well drilling); HIGHWAY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.80 for calendar year 2020 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.80 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2020. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
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0	01/03/2020
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1	01/10/2020
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2	01/31/2020
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**ATTACHMENT E
PREVAILING WAGES / LABOR PROVISIONS**

3	03/06/2020
4	05/08/2020
5	05/15/2020
6	05/29/2020
7	06/12/2020
8	07/03/2020
9	07/17/2020
10	07/24/2020
11	07/31/2020

ASBE0005-002 09/01/2019

	Rates	Fringes
Asbestos Workers/Insulator (Includes the application of all insulating materials, protective coverings, coatings, and finishes to all types of mechanical systems).....	\$ 43.77	22.48
Fire Stop Technician (Application of Firestopping Materials for wall openings and penetrations in walls, floors, ceilings and curtain walls).....	\$ 28.92	18.73

ASBE0005-004 07/01/2019

	Rates	Fringes
Asbestos Removal worker/hazardous material handler (Includes preparation, wetting, stripping, removal, scrapping, vacuuming, bagging and disposing of all insulation materials from mechanical systems, whether they contain asbestos or not)....	\$ 20.63	12.17

BOIL0092-003 03/01/2018

Rates	Fringes
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PREVAILING WAGES / LABOR PROVISIONS

BOILERMAKER.....	\$ 44.07	33.52
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* BRCA0004-011 05/01/2020

	Rates	Fringes
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BRICKLAYER; MARBLE SETTER.....	\$ 41.48	18.63
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*The wage scale for prevailing wage projects performed in Blythe, China lake, Death Valley, Fort Irwin, Twenty-Nine Palms, Needles and 1-15 corridor (Barstow to the Nevada State Line) will be Three Dollars (\$3.00) above the standard San Bernardino/Riverside County hourly wage rate

BRCA0018-004 06/01/2019

	Rates	Fringes
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MARBLE FINISHER.....	\$ 33.43	14.11
TILE FINISHER.....	\$ 28.23	12.65
TILE LAYER.....	\$ 40.07	18.36

BRCA0018-010 09/01/2018

	Rates	Fringes
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TERRAZZO FINISHER.....	\$ 31.25	13.41
TERRAZZO WORKER/SETTER.....	\$ 38.39	14.18

CARP0409-001 07/01/2018

	Rates	Fringes
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CARPENTER

(1) Carpenter, Cabinet

Installer, Insulation

Installer, Hardwood Floor

Worker and acoustical

installer.....	\$ 41.84	19.17
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(2) Millwright.....	\$ 42.91	19.17
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(3) Piledrivermen/Derrick

Bargeman, Bridge or Dock

Carpenter, Heavy Framer,

Rock Bargeman or Scowman,

Rockslinger, Shingler

**ATTACHMENT E
PREVAILING WAGES / LABOR PROVISIONS**

(Commercial).....	\$ 42.54	19.17
(4) Pneumatic Nailer, Power Stapler.....	\$ 40.09	19.17
(5) Sawfiler.....	\$ 39.83	19.17
(6) Scaffold Builder.....	\$ 31.60	19.17
(7) Table Power Saw Operator.....	\$ 40.93	19.17

FOOTNOTE: Work of forming in the construction of open cut sewers or storm drains, on operations in which horizontal lagging is used in conjunction with steel H-Beams driven or placed in pre- drilled holes, for that portion of a lagged trench against which concrete is poured, namely, as a substitute for back forms (which work is performed by piledrivers): \$0.13 per hour additional.

CARP0409-002 07/01/2016

	Rates	Fringes
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Diver

(1) Wet.....	\$ 712.48	17.03
(2) Standby.....	\$ 356.24	17.03
(3) Tender.....	\$ 348.24	17.03
(4) Assistant Tender.....	\$ 324.24	17.03

Amounts in ""Rates' column are per day

CARP0409-005 07/01/2015

	Rates	Fringes
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Drywall

DRYWALL INSTALLER/LATHER....	\$ 37.35	11.08
STOCKER/SCRAPPER.....	\$ 10.00	7.17

CARP0409-008 08/01/2010

	Rates	Fringes
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Modular Furniture Installer.....	\$ 17.00	7.41
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ELEC0440-004 12/01/2019

COMMUNICATIONS AND SYSTEMS WORK

ATTACHMENT E
PREVAILING WAGES / LABOR PROVISIONS

	Rates	Fringes
Communications System		
Installer.....	\$ 35.09	3%+15.50
Technician.....	\$ 33.09	15.89

SCOPE OF WORK:

Installation, testing, service and maintenance of systems utilizing the transmission and/or transference of voice, sound, vision and digital for commercial, educational, security and entertainment purposes for the following: TV monitoring and surveillance, background-foreground music, intercom and telephone interconnect, inventory control systems, microwave transmission, multi-media, multiplex, nurse call systems, radio page, school intercom and sound, burglar alarms, fire alarms, and low voltage master clock systems in commercial buildings. Communication Systems that transmit or receive information and/or control systems that are intrinsic to the above listed systems; inclusion or exclusion of terminations and testings of conductors determined by their function; excluding all other data systems or multiple systems which include control function or power supply; excluding installation of raceway systems, conduit systems, line voltage work, and energy management systems. Does not cover work performed at China Lake Naval Ordnance Test Station.

ELEC0477-002 06/01/2020

	Rates	Fringes
Electricians:.....	\$ 43.25	3%+24.83

CABLE SPLICER: \$1.50 per hour above Electrician rate.
TUNNEL WORK: 10% above Electrician rate.

ZONE PAY:

Zone A - 80 road miles from Post Office, 455 Orange Show Lane, San Bernardino, will be a free zone for all contractors
Zone B - Any work performed outside Zone A's 80 road miles, shall add \$12.00 per hour to the current wage scale.

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PREVAILING WAGES / LABOR PROVISIONS**

ELEC1245-001 06/01/2020

	Rates	Fringes
LINE CONSTRUCTION		
(1) Lineman; Cable splicer..	\$ 59.14	20.78
(2) Equipment specialist (operates crawler tractors, commercial motor vehicles, backhoes, trenchers, cranes (50 tons and below), overhead & underground distribution line equipment).....	\$ 47.24	19.59
(3) Groundman.....	\$ 36.12	19.19
(4) Powderman.....	\$ 51.87	18.79

HOLIDAYS: New Year's Day, M.L. King Day, Memorial Day,
Independence Day, Labor Day, Veterans Day, Thanksgiving Day
and day after Thanksgiving, Christmas Day

ELEV0018-001 01/01/2020

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 57.40	34.765+a+b

FOOTNOTE:

- a. PAID VACATION: Employer contributes 8% of regular hourly rate as vacation pay credit for employees with more than 5 years of service, and 6% for 6 months to 5 years of service.
- b. PAID HOLIDAYS: New Years Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Friday after Thanksgiving, and Christmas Day.

* ENGI0012-003 07/01/2020

	Rates	Fringes
OPERATOR: Power Equipment (All Other Work)		
GROUP 1.....	\$ 48.25	27.20
GROUP 2.....	\$ 49.03	27.20
GROUP 3.....	\$ 49.32	27.20

ATTACHMENT E
PREVAILING WAGES / LABOR PROVISIONS

GROUP 4.....	\$ 50.81	27.20
GROUP 5.....	\$ 48.96	25.25
GROUP 6.....	\$ 51.03	27.20
GROUP 8.....	\$ 51.14	27.20
GROUP 9.....	\$ 49.29	25.25
GROUP 10.....	\$ 51.26	27.20
GROUP 11.....	\$ 49.41	25.25
GROUP 12.....	\$ 51.43	27.20
GROUP 13.....	\$ 51.53	27.20
GROUP 14.....	\$ 51.56	27.20
GROUP 15.....	\$ 51.64	27.20
GROUP 16.....	\$ 51.76	27.20
GROUP 17.....	\$ 51.93	27.20
GROUP 18.....	\$ 52.03	27.20
GROUP 19.....	\$ 52.14	27.20
GROUP 20.....	\$ 52.26	27.20
GROUP 21.....	\$ 52.43	27.20
GROUP 22.....	\$ 52.53	27.20
GROUP 23.....	\$ 52.64	27.20
GROUP 24.....	\$ 52.76	27.20
GROUP 25.....	\$ 52.93	27.20
OPERATOR: Power Equipment (Cranes, Piledriving & Hoisting)		
GROUP 1.....	\$ 49.60	27.20
GROUP 2.....	\$ 50.38	27.20
GROUP 3.....	\$ 50.67	27.20
GROUP 4.....	\$ 50.81	27.20
GROUP 5.....	\$ 51.03	27.20
GROUP 6.....	\$ 51.14	27.20
GROUP 7.....	\$ 51.26	27.20
GROUP 8.....	\$ 51.43	27.20
GROUP 9.....	\$ 51.60	27.20
GROUP 10.....	\$ 52.60	27.20
GROUP 11.....	\$ 53.60	27.20
GROUP 12.....	\$ 54.60	27.20
GROUP 13.....	\$ 55.60	27.20
OPERATOR: Power Equipment (Tunnel Work)		
GROUP 1.....	\$ 50.10	27.20
GROUP 2.....	\$ 50.88	27.20
GROUP 3.....	\$ 51.17	27.20
GROUP 4.....	\$ 51.31	27.20
GROUP 5.....	\$ 51.53	27.20
GROUP 6.....	\$ 51.64	27.20
GROUP 7.....	\$ 51.76	27.20

ATTACHMENT E
PREVAILING WAGES / LABOR PROVISIONS

PREMIUM PAY:

\$3.75 per hour shall be paid on all Power Equipment Operator work on the following Military Bases: China Lake Naval Reserve, Vandenberg AFB, Point Arguello, Seely Naval Base, Fort Irwin, Nebo Annex Marine Base, Marine Corp Logistics Base Yermo, Edwards AFB, 29 Palms Marine Base and Camp Pendleton

Workers required to suit up and work in a hazardous material environment: \$2.00 per hour additional. Combination mixer and compressor operator on gunite work shall be classified as a concrete mobile mixer operator.

SEE ZONE DEFINITIONS AFTER CLASSIFICATIONS

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Bargeman; Brakeman; Compressor operator; Ditch Witch, with seat or similar type equipment; Elevator operator-inside; Engineer Oiler; Forklift operator (includes loed, lull or similar types under 5 tons; Generator operator; Generator, pump or compressor plant operator; Pump operator; Signalman; Switchman

GROUP 2: Asphalt-rubber plant operator (nurse tank operator); Concrete mixer operator-skip type; Conveyor operator; Fireman; Forklift operator (includes loed, lull or similar types over 5 tons; Hydrostatic pump operator; oiler crusher (asphalt or concrete plant); Petromat laydown machine; PJU side dum jack; Screening and conveyor machine operator (or similar types); Skiploader (wheel type up to 3/4 yd. without attachment); Tar pot fireman; Temporary heating plant operator; Trenching machine oiler

GROUP 3: Asphalt-rubber blend operator; Bobcat or similar type (Skid steer); Equipment greaser (rack); Ford Ferguson (with dragtype attachments); Helicopter radioman (ground); Stationary pipe wrapping and cleaning machine operator

GROUP 4: Asphalt plant fireman; Backhoe operator (mini-max or similar type); Boring machine operator; Boxman or mixerman (asphalt or concrete); Chip spreading machine operator; Concrete cleaning decontamination machine operator; Concrete Pump Operator (small portable); Drilling machine operator, small auger types (Texoma super economatic or

ATTACHMENT E
PREVAILING WAGES / LABOR PROVISIONS

similar types - Hughes 100 or 200 or similar types - drilling depth of 30' maximum); Equipment greaser (grease truck); Guard rail post driver operator; Highline cableway signalman; Hydra-hammer-aero stomper; Micro Tunneling (above ground tunnel); Power concrete curing machine operator; Power concrete saw operator; Power-driven jumbo form setter operator; Power sweeper operator; Rock Wheel Saw/Trencher; Roller operator (compacting); Screed operator (asphalt or concrete); Trenching machine operator (up to 6 ft.); Vacuum or much truck

GROUP 5: Equipment Greaser (Grease Truck/Multi Shift).

GROUP 6: Articulating material hauler; Asphalt plant engineer; Batch plant operator; Bit sharpener; Concrete joint machine operator (canal and similar type); Concrete planer operator; Dandy digger; Deck engine operator; Derrickman (oilfield type); Drilling machine operator, bucket or auger types (Calweld 100 bucket or similar types - Watson 1000 auger or similar types - Texoma 330, 500 or 600 auger or similar types - drilling depth of 45' maximum); Drilling machine operator; Hydrographic seeder machine operator (straw, pulp or seed), Jackson track maintainer, or similar type; Kalamazoo Switch tamper, or similar type; Machine tool operator; Maginnis internal full slab vibrator, Mechanical berm, curb or gutter (concrete or asphalt); Mechanical finisher operator (concrete, Clary-Johnson-Bidwell or similar); Micro tunnel system (below ground); Pavement breaker operator (truck mounted); Road oil mixing machine operator; Roller operator (asphalt or finish), rubber-tired earth moving equipment (single engine, up to and including 25 yds. struck); Self-propelled tar pipelining machine operator; Skiploader operator (crawler and wheel type, over 3/4 yd. and up to and including 1-1/2 yds.); Slip form pump operator (power driven hydraulic lifting device for concrete forms); Tractor operator-bulldozer, tamper-scraper (single engine, up to 100 h.p. flywheel and similar types, up to and including D-5 and similar types); Tugger hoist operator (1 drum); Ultra high pressure waterjet cutting tool system operator; Vacuum blasting machine operator

GROUP 8: Asphalt or concrete spreading operator (tamping or finishing); Asphalt paving machine operator (Barber Greene or similar type); Asphalt-rubber distribution operator; Backhoe operator (up to and including 3/4 yd.), small ford,

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Case or similar; Cast-in-place pipe laying machine operator; Combination mixer and compressor operator (gunite work); Compactor operator (self-propelled); Concrete mixer operator (paving); Crushing plant operator; Drill Doctor; Drilling machine operator, Bucket or auger types (Calweld 150 bucket or similar types - Watson 1500, 2000 2500 auger or similar types - Texoma 700, 800 auger or similar types - drilling depth of 60' maximum); Elevating grader operator; Grade checker; Gradall operator; Grouting machine operator; Heavy-duty repairman; Heavy equipment robotics operator; Kalamazoo balliste regulator or similar type; Kolman belt loader and similar type; Le Tourneau blob compactor or similar type; Loader operator (Athey, Euclid, Sierra and similar types); Mobark Chipper or similar; Ozzie padder or similar types; P.C. slot saw; Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pumpcrete gun operator; Rock Drill or similar types; Rotary drill operator (excluding caisson type); Rubber-tired earth-moving equipment operator (single engine, caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator (multiple engine up to and including 25 yds. struck); Rubber-tired scraper operator (self-loading paddle wheel type-John Deere, 1040 and similar single unit); Self-propelled curb and gutter machine operator; Shuttle buggy; Skiploader operator (crawler and wheel type over 1-1/2 yds. up to and including 6-1/2 yds.); Soil remediation plant operator; Surface heaters and planer operator; Tractor compressor drill combination operator; Tractor operator (any type larger than D-5 - 100 flywheel h.p. and over, or similar-bulldozer, tamper, scraper and push tractor single engine); Tractor operator (boom attachments), Traveling pipe wrapping, cleaning and bending machine operator; Trenching machine operator (over 6 ft. depth capacity, manufacturer's rating); trenching Machine with Road Miner attachment (over 6 ft depth capacity); Ultra high pressure waterjet cutting tool system mechanic; Water pull (compaction) operator

GROUP 9: Heavy Duty Repairman

GROUP 10: Drilling machine operator, Bucket or auger types (Calweld 200 B bucket or similar types-Watson 3000 or 5000 auger or similar types-Texoma 900 auger or similar types-drilling depth of 105' maximum); Dual drum mixer,

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dynamic compactor LDC350 (or similar types); Monorail locomotive operator (diesel, gas or electric); Motor patrol-blade operator (single engine); Multiple engine tractor operator (Euclid and similar type-except Quad 9 cat.); Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Pneumatic pipe ramming tool and similar types; Prestressed wrapping machine operator; Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Rubber tired earth moving equipment operator (multiple engine, Euclid, caterpillar and similar over 25 yds. and up to 50 yds. struck), Tower crane repairman; Tractor loader operator (crawler and wheel type over 6-1/2 yds.); Woods mixer operator (and similar Pugmill equipment)

GROUP 11: Heavy Duty Repairman - Welder Combination, Welder - Certified.

GROUP 12: Auto grader operator; Automatic slip form operator; Drilling machine operator, bucket or auger types (Calweld, auger 200 CA or similar types - Watson, auger 6000 or similar types - Hughes Super Duty, auger 200 or similar types - drilling depth of 175' maximum); Hoe ram or similar with compressor; Mass excavator operator less tha 750 cu. yards; Mechanical finishing machine operator; Mobile form traveler operator; Motor patrol operator (multi-engine); Pipe mobile machine operator; Rubber-tired earth- moving equipment operator (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck); Rubber-tired self- loading scraper operator (paddle-wheel-auger type self-loading - two (2) or more units)

GROUP 13: Rubber-tired earth-moving equipment operator operating equipment with push-pull system (single engine, up to and including 25 yds. struck)

GROUP 14: Canal liner operator; Canal trimmer operator; Remote- control earth-moving equipment operator (operating a second piece of equipment: \$1.00 per hour additional); Wheel excavator operator (over 750 cu. yds.)

GROUP 15: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator,

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operating equipment with push-pull system (multiple engine-up to and including 25 yds. struck)

GROUP 16: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 17: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 50 cu. yds. struck); Tandem tractor operator (operating crawler type tractors in tandem - Quad 9 and similar type)

GROUP 18: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, up to and including 25 yds. struck)

GROUP 19: Rotex concrete belt operator (or similar types); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, up to and including 25 yds. struck)

GROUP 20: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps, and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 21: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar type, over

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50 cu. yds. struck)

GROUP 22: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, up to and including 25 yds. struck)

GROUP 23: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating with the tandem push-pull system (multiple engine, up to and including 25 yds. struck)

GROUP 24: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 25: Concrete pump operator-truck mounted; Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

CRANES, PILEDIVING AND HOISTING EQUIPMENT CLASSIFICATIONS

GROUP 1: Engineer oiler; Fork lift operator (includes loed, lull or similar types)

GROUP 2: Truck crane oiler

GROUP 3: A-frame or winch truck operator; Ross carrier operator (jobsite)

GROUP 4: Bridge-type unloader and turntable operator; Helicopter hoist operator

GROUP 5: Hydraulic boom truck; Stinger crane (Austin-Western or similar type); Tugger hoist operator (1 drum)

GROUP 6: Bridge crane operator; Cretor crane operator; Hoist operator (Chicago boom and similar type); Lift mobile

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operator; Lift slab machine operator (Vagtborg and similar types); Material hoist and/or manlift operator; Polar gantry crane operator; Self Climbing scaffold (or similar type); Shovel, backhoe, dragline, clamshell operator (over 3/4 yd. and up to 5 cu. yds. mrc); Tugger hoist operator

GROUP 7: Pedestal crane operator; Shovel, backhoe, dragline, clamshell operator (over 5 cu. yds. mrc); Tower crane repair; Tugger hoist operator (3 drum)

GROUP 8: Crane operator (up to and including 25 ton capacity); Crawler transporter operator; Derrick barge operator (up to and including 25 ton capacity); Hoist operator, stiff legs, Guy derrick or similar type (up to and including 25 ton capacity); Shovel, backhoe, dragline, clamshell operator (over 7 cu. yds., M.R.C.)

GROUP 9: Crane operator (over 25 tons and up to and including 50 tons mrc); Derrick barge operator (over 25 tons up to and including 50 tons mrc); Highline cableway operator; Hoist operator, stiff legs, Guy derrick or similar type (over 25 tons up to and including 50 tons mrc); K-crane operator; Polar crane operator; Self erecting tower crane operator maximum lifting capacity ten tons

GROUP 10: Crane operator (over 50 tons and up to and including 100 tons mrc); Derrick barge operator (over 50 tons up to and including 100 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 50 tons up to and including 100 tons mrc), Mobile tower crane operator (over 50 tons, up to and including 100 tons M.R.C.); Tower crane operator and tower gantry

GROUP 11: Crane operator (over 100 tons and up to and including 200 tons mrc); Derrick barge operator (over 100 tons up to and including 200 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 100 tons up to and including 200 tons mrc); Mobile tower crane operator (over 100 tons up to and including 200 tons mrc)

GROUP 12: Crane operator (over 200 tons up to and including 300 tons mrc); Derrick barge operator (over 200 tons up to and including 300 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 200 tons, up to and including 300 tons mrc); Mobile tower crane operator (over 200 tons, up to and including 300 tons mrc)

ATTACHMENT E
PREVAILING WAGES / LABOR PROVISIONS

GROUP 13: Crane operator (over 300 tons); Derrick barge operator (over 300 tons); Helicopter pilot; Hoist operator, stiff legs, Guy derrick or similar type (over 300 tons); Mobile tower crane operator (over 300 tons)

TUNNEL CLASSIFICATIONS

GROUP 1: Skiploader (wheel type up to 3/4 yd. without attachment)

GROUP 2: Power-driven jumbo form setter operator

GROUP 3: Dinkey locomotive or motorperson (up to and including 10 tons)

GROUP 4: Bit sharpener; Equipment greaser (grease truck); Slip form pump operator (power-driven hydraulic lifting device for concrete forms); Tugger hoist operator (1 drum); Tunnel locomotive operator (over 10 and up to and including 30 tons)

GROUP 5: Backhoe operator (up to and including 3/4 yd.); Small Ford, Case or similar; Drill doctor; Grouting machine operator; Heading shield operator; Heavy-duty repairperson; Loader operator (Athey, Euclid, Sierra and similar types); Mucking machine operator (1/4 yd., rubber-tired, rail or track type); Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pneumatic heading shield (tunnel); Pumpcrete gun operator; Tractor compressor drill combination operator; Tugger hoist operator (2 drum); Tunnel locomotive operator (over 30 tons)

GROUP 6: Heavy Duty Repairman

GROUP 7: Tunnel mole boring machine operator

ENGINEERS ZONES

\$1.00 additional per hour for all of IMPERIAL County and the portions of KERN, RIVERSIDE & SAN BERNARDINO Counties as defined below:

That area within the following Boundary: Begin in San Bernardino County, approximately 3 miles NE of the intersection of I-15 and the California State line at that point which is

ATTACHMENT E
PREVAILING WAGES / LABOR PROVISIONS

the NW corner of Section 1, T17N,m R14E, San Bernardino Meridian. Continue W in a straight line to that point which is the SW corner of the northwest quarter of Section 6, T27S, R42E, Mt. Diablo Meridian. Continue North to the intersection with the Inyo County Boundary at that point which is the NE corner of the western half of the northern quarter of Section 6, T25S, R42E, MDM. Continue W along the Inyo and San Bernardino County boundary until the intersection with Kern County, as that point which is the SE corner of Section 34, T24S, R40E, MDM. Continue W along the Inyo and Kern County boundary until the intersection with Tulare County, at that point which is the SW corner of the SE quarter of Section 32, T24S, R37E, MDM. Continue W along the Kern and Tulare County boundary, until that point which is the NW corner of T25S, R32E, MDM. Continue S following R32E lines to the NW corner of T31S, R32E, MDM. Continue W to the NW corner of T31S, R31E, MDM. Continue S to the SW corner of T32S, R31E, MDM. Continue W to SW corner of SE quarter of Section 34, T32S, R30E, MDM. Continue S to SW corner of T11N, R17W, SBM. Continue E along south boundary of T11N, SBM to SW corner of T11N, R7W, SBM. Continue S to SW corner of T9N, R7W, SBM. Continue E along south boundary of T9N, SBM to SW corner of T9N, R1E, SBM. Continue S along west boundary of R1E, SMB to Riverside County line at the SW corner of T1S, R1E, SBM. Continue E along south boundary of T1s, SBM (Riverside County Line) to SW corner of T1S, R10E, SBM. Continue S along west boundary of R10E, SBM to Imperial County line at the SW corner of T8S, R10E, SBM. Continue W along Imperial and Riverside county line to NW corner of T9S, R9E, SBM. Continue S along the boundary between Imperial and San Diego Counties, along the west edge of R9E, SBM to the south boundary of Imperial County/California state line. Follow the California state line west to Arizona state line, then north to Nevada state line, then continuing NW back to start at the point which is the NW corner of Section 1, T17N, R14E, SBM

\$1.00 additional per hour for portions of SAN LUIS OBISPO, KERN, SANTA BARBARA & VENTURA as defined below:

That area within the following Boundary: Begin approximately 5 miles north of the community of Cholame, on the Monterey County and San Luis Obispo County boundary at the NW corner of T25S, R16E, Mt. Diablo Meridian. Continue south along the west side of R16E to the SW corner of T30S, R16E, MDM. Continue E to SW corner of T30S, R17E, MDM. Continue S to SW corner of T31S, R17E, MDM. Continue E to SW corner of T31S, R18E, MDM.

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PREVAILING WAGES / LABOR PROVISIONS

Continue S along West side of R18E, MDM as it crosses into San Bernardino Meridian numbering area and becomes R30W. Follow the west side of R30W, SBM to the SW corner of T9N, R30W, SBM. Continue E along the south edge of T9N, SBM to the Santa Barbara County and Ventura County boundary at that point which is the SW corner of Section 34. T9N, R24W, SBM, continue S along the Ventura County line to that point which is the SW corner of the SE quarter of Section 32, T7N, R24W, SBM. Continue E along the south edge of T7N, SBM to the SE corner to T7N, R21W, SBM. Continue N along East side of R21W, SBM to Ventura County and Kern County boundary at the NE corner of T8N, R21W. Continue W along the Ventura County and Kern County boundary to the SE corner of T9N, R21W. Continue North along the East edge of R21W, SBM to the NE corner of T12N, R21W, SBM. Continue West along the north edge of T12N, SBM to the SE corner of T32S, R21E, MDM. [T12N SBM is a thin strip between T11N SBM and T32S MDM]. Continue North along the East side of R21E, MDM to the Kings County and Kern County border at the NE corner of T25S, R21E, MDM, continue West along the Kings County and Kern County Boundary until the intersection of San Luis Obispo County. Continue west along the Kings County and San Luis Obispo County boundary until the intersection with Monterey County. Continue West along the Monterey County and San Luis Obispo County boundary to the beginning point at the NW corner of T25S, R16E, MDM.

\$2.00 additional per hour for INYO and MONO Counties and the Northern portion of SAN BERNARDINO County as defined below:

That area within the following Boundary: Begin at the intersection of the northern boundary of Mono County and the California state line at the point which is the center of Section 17, T10N, R22E, Mt. Diablo Meridian. Continue S then SE along the entire western boundary of Mono County, until it reaches Inyo County at the point which is the NE corner of the Western half of the NW quarter of Section 2, T8S, R29E, MDM. Continue SSE along the entire western boundary of Inyo County, until the intersection with Kern County at the point which is the SW corner of the SE 1/4 of Section 32, T24S, R37E, MDM. Continue E along the Inyo and Kern County boundary until the intersection with San Bernardino County at that point which is the SE corner of section 34, T24S, R40E, MDM. Continue E along the Inyo and San Bernardino County boundary until the point which is the NE corner of the Western half of the NW quarter of Section 6, T25S, R42E, MDM. Continue S to that point which is

ATTACHMENT E
PREVAILING WAGES / LABOR PROVISIONS

the SW corner of the NW quarter of Section 6, T27S, R42E, MDM.
Continue E in a straight line to the California and Nevada
state border at the point which is the NW corner of Section 1,
T17N, R14E, San Bernardino Meridian. Then continue NW along
the state line to the starting point, which is the center of
Section 18, T10N, R22E, MDM.

REMAINING AREA NOT DEFINED ABOVE RECIEVES BASE RATE

* ENGI0012-004 08/01/2019

	Rates	Fringes
OPERATOR: Power Equipment (DREDGING)		
(1) Leverman.....	\$ 55.65	28.75
(2) Dredge dozer.....	\$ 49.68	28.75
(3) Deckmate.....	\$ 49.57	28.75
(4) Winch operator (stern winch on dredge).....	\$ 49.02	28.75
(5) Fireman-Oiler, Deckhand, Bargeman, Leveehand.....	\$ 48.48	28.75
(6) Barge Mate.....	\$ 49.09	28.75

IRON0433-006 07/01/2020

	Rates	Fringes
IRONWORKER		
Fence Erector.....	\$ 34.58	24.81
Ornamental, Reinforcing and Structural.....	\$ 41.00	33.45

PREMIUM PAY:

\$6.00 additional per hour at the following locations:

China Lake Naval Test Station, Chocolate Mountains Naval
Reserve-Niland,
Edwards AFB, Fort Irwin Military Station, Fort Irwin Training
Center-Goldstone, San Clemente Island, San Nicholas Island,
Susanville Federal Prison, 29 Palms - Marine Corps, U.S. Marine
Base - Barstow, U.S. Naval Air Facility - Sealey, Vandenberg AFB

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\$4.00 additional per hour at the following locations:

Army Defense Language Institute - Monterey, Fallon Air Base,
Naval Post Graduate School - Monterey, Yermo Marine Corps
Logistics Center

\$2.00 additional per hour at the following locations:

Port Hueneme, Port Mugu, U.S. Coast Guard Station - Two Rock

LABO0300-005 01/01/2018

	Rates	Fringes
Asbestos Removal Laborer.....	\$ 33.19	17.78

SCOPE OF WORK: Includes site mobilization, initial site cleanup, site preparation, removal of asbestos-containing material and toxic waste, encapsulation, enclosure and disposal of asbestos- containing materials and toxic waste by hand or with equipment or machinery; scaffolding, fabrication of temporary wooden barriers and assembly of decontamination stations.

LABO0345-001 07/01/2020

	Rates	Fringes
LABORER (GUNITE)		
GROUP 1.....	\$ 45.05	19.62
GROUP 2.....	\$ 44.10	19.62
GROUP 3.....	\$ 40.56	19.62

FOOTNOTE: GUNITE PREMIUM PAY: Workers working from a Bosn'n's Chair or suspended from a rope or cable shall receive 40 cents per hour above the foregoing applicable classification rates. Workers doing gunite and/or shotcrete work in a tunnel shall receive 35 cents per hour above the foregoing applicable classification rates, paid on a portal-to-portal basis. Any work performed on, in or above any smoke stack, silo, storage elevator or similar type of structure, when such structure is in excess of

ATTACHMENT E
PREVAILING WAGES / LABOR PROVISIONS

75'-0"" above base level and which work must be performed in whole or in part more than 75'-0"" above base level, that work performed above the 75'-0"" level shall be compensated for at 35 cents per hour above the applicable classification wage rate.

GUNITE LABORER CLASSIFICATIONS

GROUP 1: Rodmen, Nozzlemen

GROUP 2: Gunmen

GROUP 3: Reboundmen

LABO0783-002 07/01/2019

	Rates	Fringes
LABORER (TUNNEL)		
GROUP 1.....	\$ 40.19	19.07
GROUP 2.....	\$ 40.51	19.07
GROUP 3.....	\$ 40.97	19.07
GROUP 4.....	\$ 41.66	19.07
LABORER		
GROUP 1.....	\$ 35.24	20.09
GROUP 2.....	\$ 35.79	20.09
GROUP 3.....	\$ 36.34	20.09
GROUP 4.....	\$ 37.89	20.09
GROUP 5.....	\$ 38.24	20.09

LABORER CLASSIFICATIONS

GROUP 1: Cleaning and handling of panel forms; Concrete screeding for rough strike-off; Concrete, water curing; Demolition laborer, the cleaning of brick if performed by a worker performing any other phase of demolition work, and the cleaning of lumber; Fire watcher, limber, brush loader, piler and debris handler; Flag person; Gas, oil and/or water pipeline laborer; Laborer, asphalt-rubber material loader; Laborer, general or construction; Laborer, general clean-up; Laborer, landscaping; Laborer, jetting; Laborer, temporary water and air lines; Material hose operator (walls, slabs, floors and decks); Plugging, filling of shee bolt holes; Dry packing of concrete; Railroad maintenance, repair track person and road beds; Streetcar and railroad

ATTACHMENT E
PREVAILING WAGES / LABOR PROVISIONS

construction track laborers; Rigging and signaling; Scaler;
Slip form raiser; Tar and mortar; Tool crib or tool house
laborer; Traffic control by any method; Window cleaner;
Wire mesh pulling - all concrete pouring operations

GROUP 2: Asphalt shoveler; Cement dumper (on 1 yd. or larger
mixer and handling bulk cement); Cesspool digger and
installer; Chucktender; Chute handler, pouring concrete,
the handling of the chute from readymix trucks, such as
walls, slabs, decks, floors, foundation, footings, curbs,
gutters and sidewalks; Concrete curer, impervious membrane
and form oiler; Cutting torch operator (demolition); Fine
grader, highways and street paving, airport, runways and
similar type heavy construction; Gas, oil and/or water
pipeline wrapper - pot tender and form person; Guinea
chaser; Headerboard person - asphalt; Laborer, packing rod
steel and pans; Membrane vapor barrier installer; Power
broom sweeper (small); Riprap stonepaver, placing stone or
wet sacked concrete; Roto scraper and tiller; Sandblaster
(pot tender); Septic tank digger and installer(lead); Tank
scaler and cleaner; Tree climber, faller, chain saw
operator, Pittsburgh chipper and similar type brush
shredder; Underground laborer, including caisson bellower

GROUP 3: Buggymobile person; Concrete cutting torch; Concrete
pile cutter; Driller, jackhammer, 2-1/2 ft. drill steel or
longer; Dri-pak-it machine; Gas, oil and/or water pipeline
wrapper, 6-in. pipe and over, by any method, inside and
out; High scaler (including drilling of same); Hydro seeder
and similar type; Impact wrench multi-plate; Kettle person,
pot person and workers applying asphalt, lay-kold,
creosote, lime caustic and similar type materials
("applying" means applying, dipping, brushing or handling
of such materials for pipe wrapping and waterproofing);
Operator of pneumatic, gas, electric tools, vibrating
machine, pavement breaker, air blasting, come-alongs, and
similar mechanical tools not separately classified herein;
Pipelayer's backup person, coating, grouting, making of
joints, sealing, caulking, diapering and including rubber
gasket joints, pointing and any and all other services;
Rock slinger; Rotary scarifier or multiple head concrete
chipping scarifier; Steel headerboard and guideline setter;
Tamper, Barko, Wacker and similar type; Trenching machine,
hand-propelled

GROUP 4: Asphalt raker, lute person, ironer, asphalt dump

ATTACHMENT E

PREVAILING WAGES / LABOR PROVISIONS

person, and asphalt spreader boxes (all types); Concrete core cutter (walls, floors or ceilings), grinder or sander; Concrete saw person, cutting walls or flat work, scoring old or new concrete; Cribber, shorer, lagging, sheeting and trench bracing, hand-guided lagging hammer; Head rock slinger; Laborer, asphalt- rubber distributor boot person; Laser beam in connection with laborers' work; Oversize concrete vibrator operator, 70 lbs. and over; Pipelayer performing all services in the laying and installation of pipe from the point of receiving pipe in the ditch until completion of operation, including any and all forms of tubular material, whether pipe, metallic or non-metallic, conduit and any other stationary type of tubular device used for the conveying of any substance or element, whether water, sewage, solid gas, air, or other product whatsoever and without regard to the nature of material from which the tubular material is fabricated; No-joint pipe and stripping of same; Prefabricated manhole installer; Sandblaster (nozzle person), water blasting, Porta Shot-Blast

GROUP 5: Blaster powder, all work of loading holes, placing and blasting of all powder and explosives of whatever type, regardless of method used for such loading and placing; Driller: All power drills, excluding jackhammer, whether core, diamond, wagon, track, multiple unit, and any and all other types of mechanical drills without regard to the form of motive power; Toxic waste removal

TUNNEL LABORER CLASSIFICATIONS

GROUP 1: Batch plant laborer; Changehouse person; Dump person; Dump person (outside); Swamper (brake person and switch person on tunnel work); Tunnel materials handling person; Nipper; Pot tender, using mastic or other materials (for example, but not by way of limitation, shotcrete, etc.)

GROUP 2: Chucktender, cabletender; Loading and unloading agitator cars; Vibrator person, jack hammer, pneumatic tools (except driller); Bull gang mucker, track person; Concrete crew, including rodder and spreader

GROUP 3: Blaster, driller, powder person; Chemical grout jet person; Cherry picker person; Grout gun person; Grout mixer person; Grout pump person; Jackleg miner; Jumbo person; Kemper and other pneumatic concrete placer operator; Miner, tunnel (hand or machine); Nozzle person; Operating of

ATTACHMENT E
PREVAILING WAGES / LABOR PROVISIONS

troweling and/or grouting machines; Powder person (primer house); Primer person; Sandblaster; Shotcrete person; Steel form raiser and setter; Timber person, retimber person, wood or steel; Tunnel Concrete finisher

GROUP 4: Diamond driller; Sandblaster; Shaft and raise work

LABO0783-005 07/01/2018

	Rates	Fringes
Brick Tender.....	\$ 32.26	18.40

LABO1184-001 07/01/2020

	Rates	Fringes
Laborers: (HORIZONTAL DIRECTIONAL DRILLING)		
(1) Drilling Crew Laborer....	\$ 37.85	15.99
(2) Vehicle Operator/Hauler..	\$ 38.02	15.99
(3) Horizontal Directional Drill Operator.....	\$ 39.87	15.99
(4) Electronic Tracking Locator.....	\$ 41.87	15.99
Laborers: (STRIPING/SLURRY SEAL)		
GROUP 1.....	\$ 39.06	19.01
GROUP 2.....	\$ 40.36	19.01
GROUP 3.....	\$ 42.37	19.01
GROUP 4.....	\$ 44.11	19.01

LABORERS - STRIPING CLASSIFICATIONS

GROUP 1: Protective coating, pavement sealing, including repair and filling of cracks by any method on any surface in parking lots, game courts and playgrounds; carstops; operation of all related machinery and equipment; equipment repair technician

GROUP 2: Traffic surface abrasive blaster; pot tender - removal of all traffic lines and markings by any method (sandblasting, waterblasting, grinding, etc.) and preparation of surface for coatings. Traffic control person: controlling and directing traffic through both

ATTACHMENT E
PREVAILING WAGES / LABOR PROVISIONS

conventional and moving lane closures; operation of all related machinery and equipment

GROUP 3: Traffic delineating device applicator: Layout and application of pavement markers, delineating signs, rumble and traffic bars, adhesives, guide markers, other traffic delineating devices including traffic control. This category includes all traffic related surface preparation (sandblasting, waterblasting, grinding) as part of the application process. Traffic protective delineating system installer: removes, relocates, installs, permanently affixed roadside and parking delineation barricades, fencing, cable anchor, guard rail, reference signs, monument markers; operation of all related machinery and equipment; power broom sweeper

GROUP 4: Striper: layout and application of traffic stripes and markings; hot thermo plastic; tape traffic stripes and markings, including traffic control; operation of all related machinery and equipment

LABO1414-003 08/07/2019

	Rates	Fringes
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LABORER

PLASTER CLEAN-UP LABORER....	\$ 34.82	20.02
PLASTER TENDER.....	\$ 37.37	20.02

Work on a swing stage scaffold: \$1.00 per hour additional.

Work at Military Bases - \$3.00 additional per hour:

Coronado Naval Amphibious Base, Fort Irwin, Marine Corps Air Station-29 Palms, Imperial Beach Naval Air Station, Marine Corps Logistics Supply Base, Marine Corps Pickle Meadows, Mountain Warfare Training Center, Naval Air Facility-Seeley, North Island Naval Air Station, Vandenberg AFB.

* PAIN0036-001 07/01/2020

	Rates	Fringes
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Painters: (Including Lead

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PREVAILING WAGES / LABOR PROVISIONS

Abatement)

(1) Repaint (excludes San Diego County).....	\$ 29.59	17.12
(2) All Other Work.....	\$ 33.12	17.24

REPAINT of any previously painted structure. Exceptions: work involving the aerospace industry, breweries, commercial recreational facilities, hotels which operate commercial establishments as part of hotel service, and sports facilities.

PAIN0036-008 10/01/2019

	Rates	Fringes
DRYWALL FINISHER/TAPER.....	\$ 42.18	19.52

PAIN0036-015 01/01/2020

	Rates	Fringes
GLAZIER.....	\$ 43.45	23.39

FOOTNOTE: Additional \$1.25 per hour for work in a condor, from the third (3rd) floor and up Additional \$1.25 per hour for work on the outside of the building from a swing stage or any suspended contrivance, from the ground up

PAIN1247-002 01/01/2020

	Rates	Fringes
SOFT FLOOR LAYER.....	\$ 37.55	13.78

PLAS0200-008 08/07/2019

	Rates	Fringes
PLASTERER.....	\$ 43.73	16.03

FORT IRWIN; MARINE CORPS AIR STATION 29 PALMS, AND MARINE CORPS LOGISTICS SUPPLY BASE: \$3.00 additional per hour.

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PREVAILING WAGES / LABOR PROVISIONS

PLAS0500-002 07/01/2020

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 38.50	25.91

PLUM0016-002 09/01/2019

	Rates	Fringes
PLUMBER, PIPEFITTER, STEAMFITTER		
Work at Edwards AFB.....	\$ 58.38	23.66
Work at Fort Irwin Army Base.....	\$ 61.88	23.66
Work at Marine Corps Logistic Base at Nebo, Marine Corps Logistic Base at Yermo and Twenty-Nine Palms Marine Base.....	\$ 58.38	23.66
Work ONLY on new additions and remodeling of bars, restaurants, stores and commercial buildings, not to exceed 5,000 sq. ft. of floor space.....	\$ 49.83	22.68
Work ONLY on strip malls, light commercial, tenant improvement and remodel work.....	\$ 38.05	21.01
All other work except work on new additions and remodeling of bars, restaurant, stores and commercial buildings not to exceed 5,000 sq. ft. of floor space and work on strip malls, light commercial, tenant improvement and remodel work.....	\$ 51.38	23.66

PLUM0345-001 09/01/2019

	Rates	Fringes
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**ATTACHMENT E
PREVAILING WAGES / LABOR PROVISIONS**

PLUMBER

Landscape/Irrigation Fitter..\$ 34.40	23.05
Sewer & Storm Drain Work....\$ 38.49	20.43

ROOF0036-002 08/01/2019

Rates	Fringes
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ROOFER.....\$ 39.52	17.47
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FOOTNOTE: Pitch premium: Work on which employees are exposed to pitch fumes or required to handle pitch, pitch base or pitch impregnated products, or any material containing coal tar pitch, the entire roofing crew shall receive \$1.75 per hour ""pitch premium"" pay.

SFCA0669-009 04/01/2019

Does not include the northern part of the City of Chino, or the Cities of Montclair and Ontario

Rates	Fringes
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SPRINKLER FITTER.....\$ 39.73	23.90
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SFCA0709-004 01/01/2020

THE NORTHERN PART OF THE CITY OF CHINO, AND THE CITIES OF MONTCLAIR AND ONTARIO:

Rates	Fringes
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SPRINKLER FITTER (Fire).....\$ 46.51	28.63
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SHEE0105-003 01/01/2020

LOS ANGELES (South of a straight line drawn between Gorman and Big Pines)and Catalina Island, INYO, KERN (Northeast part, East of Hwy 395), MONO ORANGE, RIVERSIDE, AND SAN BERNARDINO COUNTIES

Rates	Fringes
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ATTACHMENT E
PREVAILING WAGES / LABOR PROVISIONS

SHEET METAL WORKER

(1) Commercial - New Construction and Remodel work.....	\$ 45.78	28.96
(2) Industrial work including air pollution control systems, noise abatement, hand rails, guard rails, excluding aritectural sheet metal work, excluding A-C, heating, ventilating systems for human comfort...	\$ 45.78	28.96

TEAM0011-002 07/01/2019

	Rates	Fringes
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TRUCK DRIVER

GROUP 1.....	\$ 31.59	29.59
GROUP 2.....	\$ 31.74	29.59
GROUP 3.....	\$ 31.87	29.59
GROUP 4.....	\$ 32.06	29.59
GROUP 5.....	\$ 32.09	29.59
GROUP 6.....	\$ 32.12	29.59
GROUP 7.....	\$ 32.37	29.59
GROUP 8.....	\$ 32.62	29.59
GROUP 9.....	\$ 32.82	29.59
GROUP 10.....	\$ 33.12	29.59
GROUP 11.....	\$ 33.62	29.59
GROUP 12.....	\$ 34.05	29.59

WORK ON ALL MILITARY BASES:

PREMIUM PAY: \$3.00 per hour additional.

[29 palms Marine Base, Camp Roberts, China Lake, Edwards AFB, El Centro Naval Facility, Fort Irwin, Marine Corps Logistics Base at Nebo & Yermo, Mountain Warfare Training Center, Bridgeport, Point Arguello, Point Conception, Vandenberg AFB]

TRUCK DRIVERS CLASSIFICATIONS

GROUP 1: Truck driver

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PREVAILING WAGES / LABOR PROVISIONS

GROUP 2: Driver of vehicle or combination of vehicles - 2 axles; Traffic control pilot car excluding moving heavy equipment permit load; Truck mounted broom

GROUP 3: Driver of vehicle or combination of vehicles - 3 axles; Boot person; Cement mason distribution truck; Fuel truck driver; Water truck - 2 axle; Dump truck, less than 16 yds. water level; Erosion control driver

GROUP 4: Driver of transit mix truck, under 3 yds.; Dumpcrete truck, less than 6-1/2 yds. water level

GROUP 5: Water truck, 3 or more axles; Truck greaser and tire person (\$0.50 additional for tire person); Pipeline and utility working truck driver, including winch truck and plastic fusion, limited to pipeline and utility work; Slurry truck driver

GROUP 6: Transit mix truck, 3 yds. or more; Dumpcrete truck, 6-1/2 yds. water level and over; Vehicle or combination of vehicles - 4 or more axles; Oil spreader truck; Dump truck, 16 yds. to 25 yds. water level

GROUP 7: A Frame, Swedish crane or similar; Forklift driver; Ross carrier driver

GROUP 8: Dump truck, 25 yds. to 49 yds. water level; Truck repair person; Water pull - single engine; Welder

GROUP 9: Truck repair person/welder; Low bed driver, 9 axles or over

GROUP 10: Dump truck - 50 yds. or more water level; Water pull - single engine with attachment

GROUP 11: Water pull - twin engine; Water pull - twin engine with attachments; Winch truck driver - \$1.25 additional when operating winch or similar special attachments

GROUP 12: Boom Truck 17K and above

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

ATTACHMENT E
PREVAILING WAGES / LABOR PROVISIONS

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this

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PREVAILING WAGES / LABOR PROVISIONS

classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current

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negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

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The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION"

Enterprise Enrollment

State and Local

Enterprise Enrollment number
(Microsoft to complete)

4768268

Framework ID
(if applicable)

--

Previous Enrollment number
(Reseller to complete)

4768268

This Enrollment must be attached to a signature form to be valid.

This Microsoft Enterprise Enrollment is entered into between the entities as identified in the signature form as of the effective date. Enrolled Affiliate represents and warrants it is the same Customer, or an Affiliate of the Customer, that entered into the Enterprise Agreement identified on the program signature form.

This Enrollment consists of: (1) these terms and conditions, (2) the terms of the Enterprise Agreement identified on the signature form, (3) the Product Selection Form, (4) the Product Terms, (5) the Online Services Terms, (6) any Supplemental Contact Information Form, Previous Agreement/Enrollment form, and other forms that may be required, and (7) any order submitted under this Enrollment. This Enrollment may only be entered into under a 2011 or later Enterprise Agreement. By entering into this Enrollment, Enrolled Affiliate agrees to be bound by the terms and conditions of the Enterprise Agreement.

All terms used but not defined are located at <http://www.microsoft.com/licensing/contracts>. In the event of any conflict the terms of this Agreement control.

Effective date. If Enrolled Affiliate is renewing Software Assurance or Subscription Licenses from one or more previous Enrollments or agreements, then the effective date will be the day after the first prior Enrollment or agreement expires or terminates. If this Enrollment is renewed, the effective date of the renewal term will be the day after the Expiration Date of the initial term. Otherwise, the effective date will be the date this Enrollment is accepted by Microsoft. Any reference to "anniversary date" refers to the anniversary of the effective date of the applicable initial or renewal term for each year this Enrollment is in effect.

Term. The initial term of this Enrollment will expire on the last day of the month 36 full calendar months from the effective date of the initial term. The renewal term will expire 36 full calendar months after the effective date of the renewal term.

Terms and Conditions

1. Definitions.

Terms used but not defined in this Enrollment will have the definition in the Enterprise Agreement. The following definitions are used in this Enrollment:

"Additional Product" means any Product identified as such in the Product Terms and chosen by Enrolled Affiliate under this Enrollment.

"Community" means the community consisting of one or more of the following: (1) a Government, (2) an Enrolled Affiliate using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) a Customer with Customer Data that is subject to Government regulations for which Customer determines and Microsoft agrees that the use of Government Community Cloud Services is appropriate to meet Customer's regulatory requirements.

Membership in the Community is ultimately at Microsoft's discretion, which may vary by Government Community Cloud Service.

"Enterprise Online Service" means any Online Service designated as an Enterprise Online Service in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Online Services are treated as Online Services, except as noted.

"Enterprise Product" means any Desktop Platform Product that Microsoft designates as an Enterprise Product in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Products must be licensed for all Qualified Devices and Qualified Users on an Enterprise-wide basis under this program.

"Expiration Date" means the date upon which the Enrollment expires.

"Federal Agency" means a bureau, office, agency, department or other entity of the United States Government.

"Government" means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

"Government Community Cloud Services" means Microsoft Online Services that are provisioned in Microsoft's multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

"Industry Device" (also known as line of business device) means any device that: (1) is not useable in its deployed configuration as a general purpose personal computing device (such as a personal computer), a multi-function server, or a commercially viable substitute for one of these systems; and (2) only employs an industry or task-specific software program (e.g. a computer-aided design program used by an architect or a point of sale program) ("Industry Program"). The device may include features and functions derived from Microsoft software or third-party software. If the device performs desktop functions (such as email, word processing, spreadsheets, database, network or Internet browsing, or scheduling, or personal finance), then the desktop functions: (1) may only be used for the purpose of supporting the Industry Program functionality; and (2) must be technically integrated with the Industry Program or employ technically enforced policies or architecture to operate only when used with the Industry Program functionality.

"Managed Device" means any device on which any Affiliate in the Enterprise directly or indirectly controls one or more operating system environments. Examples of Managed Devices can be found in the Product Terms.

"Qualified Device" means any device that is used by or for the benefit of Enrolled Affiliate's Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Pro locally (in a physical or virtual operating system environment), or (2) a device used to access a virtual desktop infrastructure ("VDI"). Qualified Devices do not include any device that is: (1) designated as a server and not used as a personal computer, (2) an Industry Device, or (3) not a Managed Device. At its option, the Enrolled Affiliate may designate any device excluded above (e.g., Industry Device) that is used by or for the benefit of the Enrolled Affiliate's Enterprise as a Qualified Device for all or a subset of Enterprise Products or Online Services the Enrolled Affiliate has selected.

"Qualified User" means a person (e.g., employee, consultant, contingent staff) who: (1) is a user of a Qualified Device, or (2) accesses any server software requiring an Enterprise Product Client Access License or any Enterprise Online Service. It does not include a person who accesses server software or an Online Service solely under a License identified in the Qualified User exemptions in the Product Terms.

"Reseller" means an entity authorized by Microsoft to resell Licenses under this program and engaged by an Enrolled Affiliate to provide pre- and post-transaction assistance related to this agreement;

"Reserved License" means for an Online Service identified as eligible for true-ups in the Product Terms, the License reserved by Enrolled Affiliate prior to use and for which Microsoft will make the Online Service available for activation.

"State/Local Entity" means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state's jurisdiction and geographic boundaries.

"Tribal Entity" means a federally-recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

"Use Rights" means, with respect to any licensing program, the use rights or terms of service for each Product and version published for that licensing program at the Volume Licensing Site and updated from time to time. The Use Rights include the Product-Specific License Terms, the License Model terms, the Universal License Terms, the Data Protection Terms, and the Other Legal Terms. The Use Rights supersede the terms of any end user license agreement (on-screen or otherwise) that accompanies a Product.

"Volume Licensing Site" means <http://www.microsoft.com/licensing/contracts> or a successor site.

2. Order requirements.

- a. **Minimum order requirements.** Enrolled Affiliate's Enterprise must have a minimum of 250 Qualified Users or Qualified Devices. The initial order must include at least 250 Licenses for Enterprise Products or Enterprise Online Services.
 - (i) **Enterprise commitment.** Enrolled Affiliate must order enough Licenses to cover all Qualified Users or Qualified Devices, depending on the License Type, with one or more Enterprise Products or a mix of Enterprise Products and the corresponding Enterprise Online Services (as long as all Qualified Devices not covered by a License are only used by users covered with a user License).
 - (ii) **Enterprise Online Services only.** If no Enterprise Product is ordered, then Enrolled Affiliate need only maintain at least 250 Subscription Licenses for Enterprise Online Services.
- b. **Additional Products.** Upon satisfying the minimum order requirements above, Enrolled Affiliate may order Additional Products.
- c. **Use Rights for Enterprise Products.** For Enterprise Products, if a new Product version has more restrictive use rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive use rights will not apply to Enrolled Affiliate's use of that Product during that term.
- d. **Country of usage.** Enrolled Affiliate must specify the countries where Licenses will be used on its initial order and on any additional orders.
- e. **Resellers.** Enrolled Affiliate must choose and maintain a Reseller authorized in the United States. Enrolled Affiliate will acquire its Licenses through its chosen Reseller. Orders must be submitted to the Reseller who will transmit the order to Microsoft. The Reseller and Enrolled Affiliate determine pricing and payment terms as between them, and Microsoft will invoice the Reseller based on those terms. Throughout this Agreement the term "price" refers to reference price. Resellers and other third parties do not have authority to bind or impose any obligation or liability on Microsoft.
- f. **Adding Products.**
 - (i) **Adding new Products not previously ordered.** New Enterprise Products or Enterprise Online Services may be added at any time by contacting a Microsoft Account Manager or Reseller. New Additional Products, other than Online Services, may be used if an order is placed in the month the Product is first used. For Additional Products that are Online Services, an initial order for the Online Service is required prior to use.

- (ii) **Adding Licenses for previously ordered Products.** Additional Licenses for previously ordered Products other than Online Services may be added at any time but must be included in the next true-up order. Additional Licenses for Online Services must be ordered prior to use, unless the Online Services are (1) identified as eligible for true-up in the Product Terms or (2) included as part of other Licenses.
- g. **True-up requirements.** Enrolled Affiliate must submit an annual true-up order that accounts for any changes since the initial order or last order. If there are no changes, then an update statement must be submitted instead of a true-up order.
- (i) **Enterprise Products.** For Enterprise Products, Enrolled Affiliate must determine the number of Qualified Devices and Qualified Users (if ordering user-based Licenses) at the time the true-up order is placed and must order additional Licenses for all Qualified Devices and Qualified Users that are not already covered by existing Licenses, including any Enterprise Online Services.
- (ii) **Additional Products.** For Additional Products that have been previously ordered under this Enrollment, Enrolled Affiliate must determine the maximum number of Additional Products used since the latter of the initial order, the last true-up order, or the prior anniversary date and submit a true-up order that accounts for any increase.
- (iii) **Online Services.** For Online Services identified as eligible for true-up in the Product Terms, Enrolled Affiliate may place a reservation order for the additional Licenses prior to use and payment may be deferred until the next true-up order. Microsoft will provide a report of Reserved Licenses ordered but not yet invoiced to Enrolled Affiliate and its Reseller. Reserved Licenses will be invoiced retrospectively to the month in which they were ordered.
- (iv) **Subscription License reductions.** Enrolled Affiliate may reduce the quantity of Subscription Licenses at the Enrollment anniversary date on a prospective basis if permitted in the Product Terms, as follows:
- 1) For Subscription Licenses that are part of an Enterprise-wide purchase, Licenses may be reduced if the total quantity of Licenses and Software Assurance for an applicable group meets or exceeds the quantity of Qualified Devices and Qualified Users (if ordering user-based Licenses) identified on the Product Selection Form, and includes any additional Qualified Devices and Qualified Users added in any prior true-up orders. Step-up Licenses do not count towards this total count.
 - 2) For Enterprise Online Services that are not a part of an Enterprise-wide purchase, Licenses can be reduced as long as the initial order minimum requirements are maintained.
 - 3) For Additional Products available as Subscription Licenses, Enrolled Affiliate may reduce the Licenses. If the License count is reduced to zero, then Enrolled Affiliate's use of the applicable Subscription License will be cancelled.
- Invoices will be adjusted to reflect any reductions in Subscription Licenses at the true-up order Enrollment anniversary date and effective as of such date.
- (v) **Update statement.** An update statement must be submitted instead of a true-up order if, since the initial order or last true-up order, Enrolled Affiliate's Enterprise: (1) has not changed the number of Qualified Devices and Qualified Users licensed with Enterprise Products or Enterprise Online Services; and (2) has not increased its usage of Additional Products. This update statement must be signed by Enrolled Affiliate's authorized representative.
- (vi) **True-up order period.** The true-up order or update statement must be received by Microsoft between 60 and 30 days prior to each Enrollment anniversary date. The third-year true-up order or update statement is due within 30 days prior to the Expiration Date, and any license reservations within this 30 day period will not be accepted. Enrolled Affiliate

may submit true-up orders more often to account for increases in Product usage, but an annual true-up order or update statement must still be submitted during the annual order period.

(vii) **Late true-up order.** If the true-up order or update statement is not received when due, Microsoft will invoice Reseller for all Reserved Licenses not previously invoiced and Subscription License reductions cannot be reported until the following Enrollment anniversary date (or at Enrollment renewal, as applicable).

h. **Step-up Licenses.** For Licenses eligible for a step-up under this Enrollment, Enrolled Affiliate may step-up to a higher edition or suite as follows:

(i) For step-up Licenses included on an initial order, Enrolled Affiliate may order according to the true-up process.

(ii) If step-up Licenses are not included on an initial order, Enrolled Affiliate may step-up initially by following the process described in the Section titled "Adding new Products not previously ordered," then for additional step-up Licenses, by following the true-up order process.

i. **Clerical errors.** Microsoft may correct clerical errors in this Enrollment, and any documents submitted with or under this Enrollment, by providing notice by email and a reasonable opportunity for Enrolled Affiliate to object to the correction. Clerical errors include minor mistakes, unintentional additions and omissions. This provision does not apply to material terms, such as the identity, quantity or price of a Product ordered.

j. **Verifying compliance.** Microsoft may, in its discretion and at its expense, verify compliance with this Enrollment as set forth in the Enterprise Agreement.

3. **Pricing.**

a. **Price Levels.** For both the initial and any renewal term Enrolled Affiliate's Price Level for all Products ordered under this Enrollment will be Level "D" throughout the term of the Enrollment.

b. **Setting Prices.** Enrolled Affiliate's prices for each Product or Service will be established by its Reseller. Except for Online Services designated in the Product Terms as being exempt from fixed pricing, As long as Enrolled Affiliate continues to qualify for the same price level, Microsoft's prices for Resellers for each Product or Service ordered will be fixed throughout the applicable initial or renewal Enrollment term. Microsoft's prices to Resellers are reestablished at the beginning of the renewal term.

4. **Payment terms.**

For the initial or renewal order, Microsoft will invoice Enrolled Affiliate's Reseller in three equal annual installments. . The first installment will be invoiced upon Microsoft's acceptance of this Enrollment and remaining installments will be invoiced on each subsequent Enrollment anniversary date. Subsequent orders are invoiced upon acceptance of the order and Enrolled Affiliate may elect to pay annually or upfront for Online Services and upfront for all other Licenses.

5. **End of Enrollment term and termination.**

a. **General.** At the Expiration Date, Enrolled Affiliate must immediately order and pay for Licenses for Products it has used but has not previously submitted an order, except as otherwise provided in this Enrollment.

b. **Renewal option.** At the Expiration Date of the initial term, Enrolled Affiliate can renew Products by renewing this Enrollment for one additional 36-month term or by signing a new Enrollment. Microsoft must receive a Renewal Form, Product Selection Form, and renewal order prior to or at the Expiration Date. Microsoft will not unreasonably reject any renewal.

Microsoft may make changes to this program that will make it necessary for Customer and its Enrolled Affiliates to enter into new agreements and Enrollments at renewal.

c. If Enrolled Affiliate elects not to renew.

(i) **Software Assurance.** If Enrolled Affiliate elects not to renew Software Assurance for any Product under its Enrollment, then Enrolled Affiliate will not be permitted to order Software Assurance later without first acquiring a new License with Software Assurance.

(ii) **Online Services eligible for an Extended Term.** For Online Services identified as eligible for an Extended Term in the Product Terms, the following options are available at the end of the Enrollment initial or renewal term.

1) **Extended Term.** Licenses for Online Services will automatically expire in accordance with the terms of the Enrollment. An extended term feature that allows Online Services to continue month-to-month ("Extended Term") is available. During the Extended Term, Online Services will be invoiced monthly at the then-current published price as of the Expiration Date plus a 3% administrative fee for up to one year. If Enrolled Affiliate wants an Extended Term, Enrolled Affiliate must submit a request to Microsoft at least 30 days prior to the Expiration Date.

2) **Cancellation during Extended Term.** At any time during the first year of the Extended Term, Enrolled Affiliate may terminate the Extended Term by submitting a notice of cancellation to Microsoft for each Online Service. Thereafter, either party may terminate the Extended Term by providing the other with a notice of cancellation for each Online Service. Cancellation will be effective at the end of the month following 30 days after Microsoft has received or issued the notice.

(iii) **Subscription Licenses and Online Services not eligible for an Extended Term.** If Enrolled Affiliate elects not to renew, the Licenses will be cancelled and will terminate as of the Expiration Date. Any associated media must be uninstalled and destroyed and Enrolled Affiliate's Enterprise must discontinue use. Microsoft may request written certification to verify compliance.

d. Termination for cause. Any termination for cause of this Enrollment will be subject to the "Termination for cause" section of the Agreement. In addition, it shall be a breach of this Enrollment if Enrolled Affiliate or any Affiliate in the Enterprise that uses Government Community Cloud Services fails to meet and maintain the conditions of membership in the definition of Community.

e. Early termination. Any early termination of this Enrollment will be subject to the "Early Termination" Section of the Enterprise Agreement.

For Subscription Licenses, in the event of a breach by Microsoft, or if Microsoft terminates an Online Service for regulatory reasons, Microsoft will issue Reseller a credit for any amount paid in advance for the period after termination.

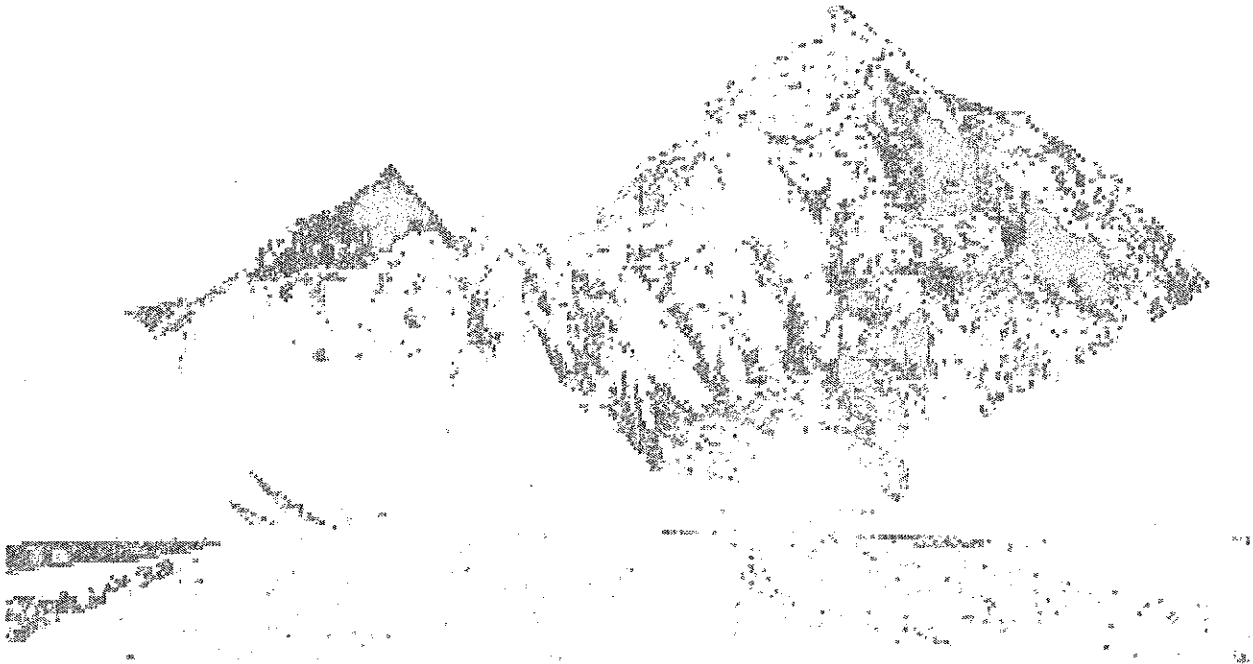
6. Government Community Cloud.

a. Community requirements. If Enrolled Affiliate purchases Government Community Cloud Services, Enrolled Affiliate certifies that it is a member of the Community and agrees to use Government Community Cloud Services solely in its capacity as a member of the Community and, for eligible Government Community Cloud Services, for the benefit of end users that are members of the Community. Use of Government Community Cloud Services by an entity that is not a member of the Community or to provide services to non-Community members is strictly prohibited and could result in termination of Enrolled Affiliate's license(s) for Government Community Cloud Services without notice. Enrolled Affiliate acknowledges that only Community members may use Government Community Cloud Services.

b. All terms and conditions applicable to non-Government Community Cloud Services also apply

to their corresponding Government Community Cloud Services, except as otherwise noted in the Use Rights, Product Terms, and this Enrollment.

- c. Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.
- d. **Use Rights for Government Community Cloud Services.** For Government Community Cloud Services, notwithstanding anything to the contrary in the Use Rights:
 - (i) Government Community Cloud Services will be offered only within the United States.
 - (ii) Additional European Terms, as set forth in the Use Rights, will not apply.
 - (iii) References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States.



Enrollment Details

1. Enrolled Affiliate's Enterprise.

- a. Identify which Agency Affiliates are included in the Enterprise. (Required) Enrolled Affiliate's Enterprise must consist of entire offices, bureaus, agencies, departments or other entities of Enrolled Affiliate, not partial offices, bureaus, agencies, or departments, or other partial entities. Check only one box in this section. If no boxes are checked, Microsoft will deem the Enterprise to include the Enrolled Affiliate only. If more than one box is checked, Microsoft will deem the Enterprise to include the largest number of Affiliates:

☒ Enrolled Affiliate only

☐ Enrolled Affiliate and all Affiliates

☐ Enrolled Affiliate and the following Affiliate(s) (Only identify specific affiliates to be included if fewer than all Affiliates are to be included in the Enterprise):

☐ Enrolled Affiliate and all Affiliates, with following Affiliate(s) excluded:

- b. Please indicate whether the Enrolled Affiliate's Enterprise will include all new Affiliates acquired after the start of this Enrollment: Exclude future Affiliates

2. Contact information.

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (*) indicate required fields. By providing contact information, Enrolled Affiliate consents to its use for purposes of administering this Enrollment by Microsoft, its Affiliates, and other parties that help administer this Enrollment. The personal information provided in connection with this Enrollment will be used and protected in accordance with the privacy statement available at <https://www.microsoft.com/licensing/servicecenter>.

- a. **Primary contact.** This contact is the primary contact for the Enrollment from within Enrolled Affiliate's Enterprise. This contact is also an Online Administrator for the Volume Licensing Service Center and may grant online access to others. The primary contact will be the default contact for all purposes unless separate contacts are identified for specific purposes

Name of entity (must be legal entity name)* Omnitrans

Contact name* First Marcos **Last** Espinoza

Contact email address* marcos.espinoza@omnitrans.org

Street address* 1700 West Fifth Street

City* San Bernardino

State* CA
Postal code* 92411-2401
(Please provide the zip + 4, e.g. xxxxx-xxxx)
Country* United States
Phone* 909-379-7176
Tax ID

** indicates required fields*

- b. Notices contact and Online Administrator.** This contact (1) receives the contractual notices, (2) is the Online Administrator for the Volume Licensing Service Center and may grant online access to others, and (3) is authorized to order Reserved Licenses for eligible Online Services, including adding or reassigning Licenses and stepping-up prior to a true-up order.

☒ Same as primary contact (default if no information is provided below, even if the box is not checked).

Contact name* First Last

Contact email address*

Street address*

City*

State*

Postal code* -

(Please provide the zip + 4, e.g. xxxxx-xxxx)

Country*

Phone*

Language preference. Choose the language for notices. English

☐ This contact is a third-party (not the Enrolled Affiliate). Warning: This contact receives personally identifiable information of the Customer and its Affiliates.

** indicates required fields*

- c. Online Services Manager.** This contact is authorized to manage the Online Services ordered under the Enrollment and (for applicable Online Services) to add or reassign Licenses and step-up prior to a true-up order.

☒ Same as notices contact and Online Administrator (default if no information is provided below, even if box is not checked)

Contact name*: First Last

Contact email address*

Phone*

☐ This contact is from a third party organization (not the entity). Warning: This contact receives personally identifiable information of the entity.

** indicates required fields*

- d. Reseller information.** Reseller contact for this Enrollment is:

Reseller company name* Dell Inc.

Street address (PO boxes will not be accepted)* One Dell Way

City* Round Rock

State* TX

Postal code* 78682

Country* United States

Contact name* Government Contract Admin

Phone* 847-465-3700

Contact email address* US_MS_VL_Admin@Dell.com

** indicates required fields*

By signing below, the Reseller identified above confirms that all information provided in this Enrollment is correct.

Signature* _____
Printed name* _____
Printed title* _____
Date* _____

** indicates required fields*

Changing a Reseller. If Microsoft or the Reseller chooses to discontinue doing business with each other, Enrolled Affiliate must choose a replacement Reseller. If Enrolled Affiliate or the Reseller intends to terminate their relationship, the initiating party must notify Microsoft and the other party using a form provided by Microsoft at least 90 days prior to the date on which the change is to take effect.

- e. If Enrolled Affiliate requires a separate contact for any of the following, attach the Supplemental Contact Information form. *Otherwise, the notices contact and Online Administrator remains the default.*
- (i) Additional notices contact
 - (ii) Software Assurance manager
 - (iii) Subscriptions manager
 - (iv) Customer Support Manager (CSM) contact

3. Financing elections.

Is a purchase under this Enrollment being financed through MS Financing? ☐ Yes, ☒ No

If a purchase under this Enrollment is financed through MS Financing, and Enrolled Affiliate chooses not to finance any associated taxes, it must pay these taxes directly to Microsoft.

Program Signature Form

MBA/MBSA number

Agreement number

8084445

Proposal ID

Note: Enter the applicable active numbers associated with the documents below. Microsoft requires the associated active number be indicated here, or listed below as new.

For the purposes of this form, "Customer" can mean the signing entity, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement.

This signature form and all contract documents identified in the table below are entered into between the Customer and the Microsoft Affiliate signing, as of the effective date identified below.

Contract Document	Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
Enterprise Enrollment	X20-10635 (new)
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
Product Selection Form	0981558.003 (new)
Document Description	Document Number or Code
Document Description	Document Number or Code
Document Description	Document Number or Code
Document Description	Document Number or Code

By signing below, Customer and the Microsoft Affiliate agree that both parties (1) have received, read and understand the above contract documents, including any websites or documents incorporated by reference and any amendments and (2) agree to be bound by the terms of all such documents.

Customer
Name of Entity (must be legal entity name)* Omnitrans Signature* _____ Printed First and Last Name* Erin Rogers Printed Title CEO/General Manager Signature Date* _____ Tax ID N/A

* indicates required field

Microsoft Affiliate
Microsoft Corporation
Signature _____ Printed First and Last Name _____ Printed Title _____ Signature Date _____ (date Microsoft Affiliate countersigns)
Agreement Effective Date _____ (may be different than Microsoft's signature date)

Optional 2nd Customer signature or Outsourcer signature (if applicable)

Customer
Name of Entity (must be legal entity name)* _____ Signature* _____ Printed First and Last Name* _____ Printed Title _____ Signature Date* _____

* indicates required field

Outsourcer
Name of Entity (must be legal entity name)* _____ Signature* _____ Printed First and Last Name* _____ Printed Title _____ Signature Date* _____

* indicates required field

If Customer requires additional contacts or is reporting multiple previous Enrollments, include the appropriate form(s) with this signature form.

After this signature form is signed by the Customer, send it and the Contract Documents to Customer's channel partner or Microsoft account manager, who must submit them to the following address. When the signature form is fully executed by Microsoft, Customer will receive a confirmation copy.

Microsoft Corporation
 Dept. 551, Volume Licensing
 6880 Sierra Center Parkway
 Reno, Nevada 89511
 USA

Microsoft | Volume Licensing

Discount Transparency Disclosure Form

Date: 7/23/2020
Program: Enterprise 6
Enrollment Number: Renewal
Quote Number: 0981558.003
Partner Name: Dell Inc.
Reseller Address: One Dell Way
RoundRock, TX, United States, 78682-7000

Discount Details

For this enrollment, Microsoft provided the Customer's Partner an additional discount off of the Partner's Net Price. The Partner is required, by Microsoft, to pass on the additional discount to the Customer by reducing the Microsoft Product resale price by an amount equal to or greater than the discount.

Listed in the table below is the maximum price the partner may charge for the Microsoft Products to be ordered under this enrollment. The Maximum Resale Price (MRP) is calculated by subtracting the additional discount provided to the Partner, from the total estimated resale price for the Microsoft Products.

The requirement to pass through the additional discount, does not mean that Microsoft is setting the Customer's actual price. Partners remain free to set the price charged for Microsoft Products at any point equal to or below MRP. The Customer's actual price will be established by a separate agreement between Customer and its Partner.

Ordered Products

Currency	Maximum Resale Price
US Dollar	278,018

Note: The Maximum Resale Price listed in the table above only pertains to the Microsoft Products to be ordered under this Enrollment. The content of this form has no impact on the Customer's price for Non-Microsoft products and services.

In this form, the following definitions apply:

"Customer" means the entity that may enter or has entered into a Contract with the Partner.

"Contract" means a binding agreement between the Partner and Affiliate, under which Customer orders Products from Partner.

"Microsoft" means (1) the entity that has entered into an agreement with Partner under which Partner may place orders for Microsoft Products for use by the Customer and (2) the affiliates of such entity, as appropriate.

"Maximum Resale Price" means the sum of the Estimated Retail Price for all Microsoft Products ordered under the Customer Contract minus the aggregated discount off of the Partner's Net Price provided by Microsoft listed in the currency in which the Partner or Partner's reseller transacts with Microsoft.

"Product" means all Microsoft Products identified in the Product Terms, such as all Software, Online Services, and other web-based services, including pre-release or beta version. Microsoft product availability may vary by region.

Partner:

Customer:

Signature of Customer's authorized representative:

Printed name:

Printed title:

Date:

DELL

Omnitrans

ERIN ROGERS

CEO / GENERAL MANAGER

Proposal ID

0981558.003

Enrollment Number

Language: English (United States)

Enrolled Affiliate's Enterprise Products and Enterprise Online Services summary for the initial order:

Profile	Qualified Devices	Qualified Users	Device / User Ratio	Enterprise Product Platform	CAL Licensing Model
Enterprise	250	250	1.0	No	User Licenses

Products	Enterprise Quantity
Office Professional Plus	
Office Professional Plus	50
Office 365 Plans	
Office 365 Plan E3 USL	115
Office 365 (Plan G5) with PSTN Conferencing USL	85
Client Access License (CAL)	
Core CAL	
Core CAL Bridge for Office 365 From SA	200

Enrolled Affiliate's Product Quantities:

Price Group	1	2	3	4
Enterprise Products	Office Professional Plus + Office 365 ProPlus + Office 365 (Plans E3 and E5) + Microsoft 365 Enterprise	Client Access License + Office 365 (Plans E1, E3 and E5) + Microsoft 365 Enterprise	Client Access License + Windows Intune + EMS USL + Microsoft 365 Enterprise	Win E3 + Win E5 + Win VDA + Microsoft 365 Enterprise
Quantity	250	200	0	0

Enrolled Affiliate's Price Level:

Product Offering / Pool	Price Level
Enterprise Products and Enterprise Online Services USLs: Unless otherwise indicated in associated contract documents, Price level set using the highest quantity from Groups 1 through 4.	D
Additional Product Application Pool: Unless otherwise indicated in associated contract documents, Price level set using quantity from Group 1.	D
Additional Product Server Pool: Unless otherwise indicated in associated contract documents, Price level set using the highest quantity from Group 2 or 3.	D
Additional Product Systems Pool: Unless otherwise indicated in associated contract documents, Price level set using quantity from Group 4.	D

NOTES

Unless otherwise indicated in the associated contract documents, the price level for each Product offering / pool is set as described above, based upon the quantity to price level mapping below:

Quantity of Licenses and Software Assurance	Price Level
2,399 and below	A
2,400 to 5,999	B
6,000 to 14,999	C
15,000 and above	D

Note 1: Enterprise Online Services may not be available in all locations. Please see the Product List for a list of locations where these may be purchased.

Note 2: Unless otherwise indicated in associated Agreement documents, the CAL selection must be the same across the Enterprise for each Profile.

Note 3: If Enrolled Affiliate does not order an Enterprise Product or Enterprise Online Service associated with an applicable Product pool, the price level for Additional Products in the same pool will be price level "A" throughout the term of the Enrollment. Refer to the Qualifying Government Entity Addendum pricing provision for more details on price leveling.

**OMNITRANS
TERMS AND CONDITIONS OF PURCHASE**

1. **PURCHASE ORDER (P.O.)** Omnitrans shall not be responsible for goods or services provided to officials or employees without a duly authorized P.O.
2. **INVOICES.** Invoices shall be submitted under the same name as that which is shown on the face of this P.O. The P.O. number must appear on all invoices, shipping notices, delivery and packing slips, packages and correspondence. Each P.O. shall be invoiced separately. Submit invoices monthly or as prescribed by Omnitrans' Finance Dept.
Invoices shall reference the appropriate purchase order number and contract number. Contractor shall send invoices to:
 - accounts@omnitrans.org Finance
 - contracts@omnitrans.org ProcurementThe above does not apply to those Contractors whose invoices are also their packing slip, work order, delivery ticket, etc.
3. **PACKING SLIPS.** Packing slips must accompany each shipment unit (included with each package in shipment), showing Omnitrans' P.O. number, description, and part number for each item.
4. **ACCEPTANCE.** Goods are subject to Omnitrans' inspection and approval within a reasonable time after delivery. If specifications are not met or not approved, material may be returned at supplier's expense.
5. **DELIVERY.** Unless otherwise indicated on the face of this order, delivery shall be FOB destination. COD shipments will not be accepted. Deliveries for all departments must be made through Omnitrans' Receiving Department. Nonpayment may result for goods delivered in any other manner.
6. **PARTIAL DELIVERIES.** Shipments must be identified as partial or complete, along with the number of shipping units.
7. **MODIFICATIONS.** Supplier shall not make any alterations or change to this order in any fashion without prior written authorization from Omnitrans.
8. **WARRANTY.** Vendor warrants that the item(s) provided and/or work performed under this contract comply with all specifications, are free of liens and encumbrances, and that workmanship and materials are free from defects. Work shall comply with nationally recognized codes and established industry standards. Equipment shall carry the manufacturers' most favorable commercial warranties. The warranty period shall begin after acceptance of item(s) and/or work. Vendor agrees to remedy by replacing or repairing any item(s) that is damaged or defective during normal usage within the warranty period, at no additional cost to Omnitrans. Such repair or replacement shall occur within a reasonable time frame and to the satisfaction of Omnitrans.
9. **FEDERAL, STATE AND LOCAL LAWS.** All goods or services furnished pursuant to this P.O. shall comply with all CAL-OSHA standards and regulations and all applicable Federal, state and local laws and regulations.
10. **GOVERNING LAW.** This P.O. and the contract between the parties evidenced hereby or attached thereto shall be deemed to be made in the State of California and shall in all respects be construed and governed by the laws of that state.
11. **PATENT PROTECTION.** To the extent the subject articles are not manufactured pursuant to design originated by Omnitrans, supplier agrees it will indemnify and hold Omnitrans and its officers, agents, and employees harmless from any loss, damage or liability which may be incurred on account of any alleged infringement of any United States patent with respect to such articles or materials, and that it will, at its own expense, defend any action, suit or claim in which such infringement is alleged. Omnitrans agrees to notify supplier promptly of any suit or claim against Omnitrans for any alleged infringement of patent.
12. **DISADVANTAGED BUSINESS ENTERPRISE.** The supplier shall not discriminate based on race, color, national origin, or sex in the performance of this P.O.
13. **ENERGY CONSERVATION.** The supplier agrees to comply with the requirements of the Resource Conservation and Recovery Act, as amended, 42 USC §§6901 et seq.
14. **TITLE VI OF THE CIVIL RIGHTS ACTS OF 1964.** Supplier agrees to comply with all applicable requirements of Title VI of the Civil Rights Act of 1964, 42 USC § 2000d and USDOT regulations "Nondiscrimination in Federally Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act," 49 CFR, part 21.
15. **RECORD RETENTION.** The supplier shall make available within 30 days, upon request by Omnitrans, all records related to this P.O. for a period of up to three (3) years after closure.
16. **INSURANCE.** The supplier shall be required to provide a Certificate of Insurance for (1) Workers' Compensation in an amount to meet the requirements of the Labor Code of the State of California, including Employer's Liability with \$1,000,000 limits covering all persons including volunteers providing services on behalf of the supplier and all risks to such persons under this contract; (2) Commercial/General Liability (CGL) insurance covering all operations performed by or on behalf of the supplier, providing coverage for bodily injury and property damage with a \$1,000,000 per occurrence and \$2,000,000 general aggregate limit. The CGL policy coverage shall include: premises operations and mobile equipment; products and completed operations; broad form property damage; explosion, collapse and underground hazards; personal injury; contractual liability and (3) Auto Liability (AL) insurance with a combined single limit (CSL) of not less than \$1,000,000 per occurrence. CGL and AL must contain an endorsement that names Omnitrans as an additional insured with coverage at least as broad as Additional Insured (Form B) endorsement form ISO, CG 20 10 11 85.

17. **AMERICANS WITH DISABILITIES ACT.** The supplier agrees to comply with all the applicable requirements of the Americans with Disabilities Act of 1990, 42 USC §§12101 et seq. in conjunction with this P.O.
18. **DRUG AND ALCOHOL POLICY.** It is the policy of Omnitrans that anyone, while on Agency property, is prohibited from unlawfully manufacturing, distributing, dispensing, possessing or using controlled substances or alcohol or illegally using or misusing legally prescribed drugs.
19. **INTEREST OF MEMBERS OF CONGRESS.** No member of or delegate to the Congress of the United States shall be admitted to any share or part of the P.O.
20. **INDEMNIFICATION.** The supplier shall indemnify, keep and save harmless Omnitrans, its agents, officials and employees from any and all claims, actions, losses, damages, and/or liability arising out of this P.O. from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by Omnitrans on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The supplier's indemnification obligation applies to Omnitrans' "active" as well as "passive" negligence but does not apply to Omnitrans' "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.
21. **FORCE MAJEURE (EVENTS BEYOND THE CONTROL OF THE SUPPLIER).** The supplier will not be held liable for failure of delay in fulfillment if hindered or prevented by act of God, fire, strike, loss or shortage of transportation facilities, lock-out, commandeering of materials, products, plants or facilities by government that are not reasonably foreseeable.
22. **ACKNOWLEDGMENT.** By delivery of the goods or services purchased herein, the supplier agrees to all the terms and conditions of this P.O.
23. **TERMINATION.** Omnitrans may terminate the P.O. in whole or in part for Omnitrans' convenience or because of the failure of the supplier to fulfill the contract obligation. Omnitrans' CEO/General Manager shall terminate by specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the supplier shall: (a) immediately discontinue all services affected and (b) deliver to Omnitrans' CEO/General Manager all data, drawings, specifications, reports, estimates, summaries and other information and materials accumulated in performing this contract, whether completed or in process. If the termination is for the convenience of Omnitrans, Omnitrans shall make an equitable adjustment in the P.O., but shall not allow anticipated profit on unperformed services.
24. **APPLICABILITY.** The Terms and Conditions stated herein will supersede or supplement the terms and conditions of any Omnitrans procurement wherein the terms and conditions were previously specified.
25. **OSHA COMPLIANCE.** The items covered by this P.O. must conform to safety orders of OSHA, CALOSHA, and /or NIOSH, and applicable Material Safety Data Sheets (MSDS). Vendor is required to provide a completed MSDS for all hazardous substances as required by Labor Code Sections 6390; General Industrial Safety Order, Section 5194; and Title 8, California Admins. Code. MSDS sheets need to be sent to Omnitrans' Safety and Regulatory Compliance Specialist for each specified item and a copy sent to Omnitrans' Procurement Department.
26. **QUESTIONS.** Questions regarding the Terms and Conditions of this P.O. are to be directed to the Procurement Department, phone 909.379.7146; fax: 909.379.7107; 1700 West Fifth Street, San Bernardino, CA 92411.

End of the Purchase Order Terms and Conditions

Date last revised: February 28, 2013



Request for Quotes (RFQ) RFQ-MNT21-17
DC Fast Charging Stations

ATTACHMENT C - PRICING
MNT21-17
DC FAST CHARGING STATIONS

	Description	Price
1	(2) Terra 54HV UL DC Fast Charging Stations with commissioning	\$55,820.00
2	Tax	\$4,193.60
3	Total	\$60,013.60

ATTACHMENT A – SCOPE OF WORK
MNT21-17
DC FAST CHARGING STATIONS

General

Omnitrans requires DC Fast Charging Stations for New Flyer electric transit buses. The buses are currently on order, and additional buses may be added. The basis of design for the chargers is ABB Terra UL54HV-C-6-7M-0-0 Terra 50 kW charger, CCS-1, 6 m cable, 200-920 V, UL

Provide two (2) chargers listed above.

Delivery location is listed below:

Omnitrans
1700 W. Fifth Street
San Bernardino CA 92411

General Information: A7:B34A2A7:B32A7:B37A2A7A7:B32

Extended Product Type: Terra UL 54HV C-607M-0-0

Product ID: 6AGC076299

ABB Type Designation: Terra XX(HV) YYY

Catalog Description: TerraUL54HV-C-6-7M-0-0 Terra 50 kW charger, CCS-1, 6 m cable, 200-920 V, UL

SPECIFICATIONS

Environment	Indoor/Outdoor
Operating temperature	-35 °C to +55 °C / -31 °F to +131 °F (de-rating characteristics apply)
Storage temperature	-40 °C to +70 °C / -40 °F to +158 °F
Altitude	2500m / 8200 ft
Compliance and safety	Compliance to UL 2202 and CSA 107.1 and CCS-1 / SAE J1772
EMC emission	IEC 61000-6-3 Class B – Residential
EMC immunity	IEC 61000-6-2 Industrial
Input AC power connection	3P + PE (no neutral)

ATTACHMENT A – SCOPE OF WORK
MNT21-17
DC FAST CHARGING STATIONS

Input voltage range	480 VAC +/- 10 % (60 Hz)
Max. rated input current & power	80 A, 55 kVA; power limiting options available
Power factor (full load)	> 0.96
Efficiency	95 % at nominal output power
RFID system	ISO/IEC 14443A/B, ISO/IEC 15393, FeliCa™ 1, NFC reader mode, Mifare, Calypso, (option: Legic)
Network connection	GSM / 3G modem, 10/100 Base-T Ethernet
Protection	NEMA Type 3R / IP54
User interface	High brightness full color touchscreen; ADA Compliant RFID, PIN and credit card kit options
Communication	OCPP 1.5 and OCPP 1.6 enabled
Dimensions (D x W x H)	780 mm x 565 mm x 1900 mm 30.7" x 22.2" x 74.8"
Weight	375 kg / 830 lbs
Shipping dimensions (D x W x H)	1200 mm x 800 mm x 2150 mm 48" x 32" x 85"
Outlet specifications	C
Charging standard	CCS
Maximum output power	50 kW
Output voltage Terra 54HV	200 - 920 VDC
Maximum output current	125 ADC
Connector/socket type	CCS-1 / SAE J1772

ATTACHMENT A – SCOPE OF WORK
MNT21-17
DC FAST CHARGING STATIONS

Cable length	20' Standard
Qty (2) Cable Management Options	(RTR-ABB-003K)
Qty (2) Activation Services	Remote SAT Commissioning

Warranty

Successful bidder shall provide the manufactures standard stated warranty.

Attachment B

REGULATORY REQUIREMENT

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REGULATORY REQUIREMENTS

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

Required Clauses for All FTA-Assisted Third-Party Contracts and Subcontracts

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.

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 ADMINISTRATION (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 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
 - (a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, Contractor shall comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq. , (which implement Executive

Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of the Contract. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor shall comply with any implementing requirements FTA may issue.

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

RR-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 Omnitrans' DBE Program 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.
- 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 effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

Flow Down

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

- a. **Termination for Convenience (General Provision)** Omnitrans may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Omnitrans to be paid the Contractor. If the Contractor has any property in its possession belonging to the

Omnitrans, the Contractor will account for the same, and dispose of it in the manner the Omnitrans directs.

- b. **Opportunity to Cure (General Provision)** Omnitrans in its sole discretion may, in the case of a termination for breach or default, allow the Contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

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

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

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

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. The contractor, within [10] days from the beginning of any delay, notifies Omnitrans in writing of the causes of delay. If in the judgment of Omnitrans, the delay is excusable, the time for completing the work shall be extended. The judgment of Omnitrans shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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

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

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.

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-010

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-011

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.

RR-012

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-013 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.

directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

RR-014 ADMINISTRATIVE CODE *

A. Applicability

This Article applies to all contracts.

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

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

1. Contractor shall not cause or permit any member, officer, or employee of Omnitrans to have any financial interest in the Contract;
2. Contractor shall not enter into any Subcontract involving services or property with a person or business prohibited from transacting such business with Omnitrans;

3. Contractor warrants and represents that to its knowledge no Board member, officer, or employee of Omnitrans has any interest, whether contractual, non-contractual, financial or otherwise, in this Contract, or in the business or any other contract or transaction of the Contractor or any Subcontractor and that if any such interest comes to Contractor's knowledge at any time, Contractor shall make a full and complete disclosure of all such information in writing to Omnitrans.

C. Campaign Contributions

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

**RR-015
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-016
WHISTLEBLOWER REQUIREMENTS ***

A. Applicability

This Article applies to all contracts.

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

**RR-017
PUBLIC RECORDS ACT ***

A. Applicability

This Article applies to all contracts.

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

RR-018
PRIVACY ACT - 5 U.S.C. 552

Applicability to Contracts

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

Flow Down

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

Model Clause/Language

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

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

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

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the

requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

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

END OF REGULATORY REQUIREMENTS



PERSONNEL POLICY MANUAL

POLICY 707 PAGE 1 OF 6

SUBJECT
PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS
BOARD OF DIRECTORS

DATE: June 7, 2017

I. Purpose

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

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

II. Scope

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

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

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

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

III. Procedure

A. COMMUNICATION OF POLICY

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

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



PERSONNEL POLICY MANUAL

POLICY 707 PAGE 2 OF 6

SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

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BOARD OF DIRECTORS

DATE: June 7, 2017

B. PROHIBITED CONDUCT

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

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

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

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

C. SEARCH

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

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

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

D. DISCIPLINE

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



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up to and including separation of employment.

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

E. REPORT OF VIOLATIONS

1. Employee Violations

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

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

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

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

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

2. Visitor Violations

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



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

F. FALSE REPORTS

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

G. ROLES AND RESPONSIBILITIES

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

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

H. SAFETY FIRST

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

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

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

I. ANTI-RETALIATION PROVISION

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



PERSONNEL POLICY MANUAL

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J. DEFINITIONS

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

- A firearm, whether loaded or unloaded, from which a shot may be discharged including but not limited to handguns, pistols, revolvers, shotguns, rifles, and bb guns;
- A gun that can discharge a shot or a projectile by means of an explosive or gas, or compressed air;
- A device designed to be used as a weapon, from which can be expelled a projectile by the force of any explosion or force of combustion;
- Any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
- Any destructive device;
- Any device designed as a weapon and capable of producing great bodily harm, including but not limited to, stun guns, stun batons;
- An electric weapon such as a taser gun;
- Any combustible or flammable liquid, or other substance, device, or instrumentality that, in a manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or any fire that is used to produce death or great bodily harm;
- Any knife that is carried with intention or calculation to produce death or great bodily harm having a blade length in excess of four (4) inches, the blade of which is fixed or is capable of being fixed in an unguarded position by the use of one or two hands. Switchblades are specifically prohibited. (Knives intended to be used as eating utensils, and stored or maintained in office kitchens or lunchrooms do not represent a violation of this policy.)

2. **Office:** All permanent facilities, all mobile facilities, all leased facilities, and any facility designated as an office by the agency.

3. **Parking lot:** All lots at permanent facility, park and rides, lots at project sites, any lot that the agency designates as a parking lot that is not at a permanent facility or project site.

4. **Agency vehicle:** All agency-owned buses/vehicles, all agency-leased buses/vehicles, all agency-rental buses/vehicles, and all personal vehicles for which the owner receives a vehicle allowance, all personal vehicles where the owner receives reimbursement for mileage.



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

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

SIGNS

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

ATTACHMENT G

Disadvantaged Business Enterprise (DBE) Program Requirements

Disadvantaged Business Enterprise (DBE) Participation

I. Race-Neutral DBE Participation

The Contractor is required to submit a DBE Race-Neutral Participation Listing to identify DBE subcontractor(s) proposed in the performance of this U.S. DOT-assisted contract, and further agrees to ensure that DBE subcontractors listed in the “DBE Race-Neutral Participation Listing” perform work and/or supply materials in accordance with original commitments, unless otherwise directed and/or approved by the Omnitrans prior to the Prime Contractor effectuating any changes to its race-neutral DBE participation commitments. The Contractor is required to submit this form whether or not DBE subcontractors have been proposed.

Prime Contractor shall ensure the DBE information submitted shall include the North American Industry Classification System (NAICS) code applicable to the kind of work the DBE subcontractor(s) will perform on the contract.

In the event the Contractor commits to utilizing a DBE in the performance of this contract after contract award, the Contractor will comply with the same reporting requirements delineated above and submit a “DBE Race-Neutral Participation Listing” for new DBE commitments made after award and during contract performance.

II. DBE Policy and Applicability

In accordance with federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), Omnitrans has adopted a Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR, Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Programs”.

The project is subject to these stipulated regulations and Omnitrans’ DBE Program. In order to ensure that Omnitrans achieves its overall DBE Program goal, Omnitrans encourages the participation of DBEs as defined in 49 CFR, Part 26 in the performance of contracts financed in whole or in part with U.S. DOT funds. Pursuant to the intent of these regulations, it is also the policy of Omnitrans to:

Fulfill the spirit and intent of the Federal DBE Program regulations published under U.S. DOT Title 49 CFR, Part 26, by ensuring that DBE’s have equitable access to participate in all of Omnitrans’ and identified Prime Contractor DOT-assisted contracting opportunities.

- a. Ensure that DBEs can fairly compete for and perform on all DOT-assisted contracts and subcontracts.
- b. Ensure non-discrimination in the award and administration of Omnitrans’ DOT-assisted contracts.
- c. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
- d. Ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs in DOT-assisted contracts.
- e. Help remove barriers to the participation of DBEs in DOT-assisted contracts.
- f. Assist in the development of firms that can compete successfully in the marketplace outside the DBE Program.

ATTACHMENT G

Disadvantaged Business Enterprise (DBE) Program Requirements

Contractor will not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

Any terms used in this section that is defined in 49 CFR, Part 26, or elsewhere in the Regulations, will have the meaning set forth in the Regulations. In the event of any conflicts or inconsistencies between the Regulations and Omnitrans' DBE Program with respect to DOT-assisted contracts, the Regulations will prevail.

III. Omnitrans' Race-Neutral DBE Policy Implementation Directives

Pursuant to Race-Neutral DBE policy directives issued by the U.S. DOT in response to the Ninth Circuit U.S. Court of Appeals decision in *Western States Paving Co. v. Washington State Department of Transportation*, Omnitrans has implemented a wholly Race-Neutral DBE Program.

A Race-Neutral DBE Program is one that, while benefitting DBEs, is not solely focused on DBE firms. Therefore, under a Race-Neutral DBE Program, Omnitrans does not establish numeric race-conscious DBE participation goals on its DOT-assisted contracts. However, the Prime Contractor will adhere to race-neutral DBE participation commitments made at the time of contract award.

IV. Definitions

The following definitions apply to the terms as used in these provisions:

- a. "Disadvantaged Business Enterprise (DBE)" means a small business concern: (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- b. "Socially and Economically Disadvantaged Individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans, women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, or by Omnitrans pursuant to 49 CFR part 26.65. Members of the following groups are presumed to be socially and economically disadvantaged:
 1. "Black Americans" which includes persons having origins in any of the Black racial groups of Africa;
 2. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 3. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 4. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;

ATTACHMENT G

Disadvantaged Business Enterprise (DBE) Program Requirements

5. “Asian-Indian Americans,” which includes persons whose origins are from India, Pakistan, and Bangladesh; and
 6. Women, regardless of ethnicity or race.
- c. “Owned and Controlled” means a business: (a) which is at least 51 percent owned by one or more “Socially and Economically Disadvantaged Individuals” or, in the case of a publicly-owned business, at least 51 percent of the stock of which is owned by one or more “Socially and Economically Disadvantaged Individuals”; and (b) whose management and daily business operations are controlled by one or more such individuals.
 - d. “Manufacturer” means a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the contractor.
 - e. “Regular Dealer” means a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. The firm must engage in, as its principal business, and in its own name, the purchase and sale of the product in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock if it owns or operates distribution equipment.
 - f. “Other Socially and Economically Disadvantaged Individuals” means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who, on a case-by-case basis, are determined by Small Business Administration or certifying agency under the California Unified Certification Program (CUCP) to meet the social and economic disadvantage criteria described in 49 CFR Part 26.67.

V. Race-Neutral DBE Submission and Ongoing Reporting Requirements (Post- Award)

Contractor shall report both DBE and non-DBE subcontractor payment details to Omnitrans using the web-based system by the 15th of each month. The web-based system allows Contractor to manage their own records, maintain accurate contract award information, and report subcontractor payment details online.

Use of the web-based system is mandatory for the Contractor and subcontractor to use unless Omnitrans instructs otherwise in writing to Contractor. A Contractor account will be created after award, which will allow Contractor to enter data into the web-based system via an internet browser. After award, Contractor will receive instructions to set up their account and enter required subcontractor data. Contractor must require each of its subcontractors to enter required payment verification information into the web-based system. Subcontractors with lower tier subcontractors must require lower tier subcontractors to enter required payment data into the web-based system. Failure of Contractor or its subcontractors to enter required information on a timely basis may result in delay of payment by Omnitrans and may subject Contractor to withholding of payments or penalties for noncompliance.

If Omnitrans approves in writing the use of a form instead of the web-based system to report monthly payments to subcontractors, Contractor will complete and submit the following exhibit at the times specified:

ATTACHMENT G

Disadvantaged Business Enterprise (DBE) Program Requirements

Summary Subcontractors Paid Monthly Report and Payment Verification: (Requires Omnitrans Approval in Writing).

The Contractor will be required to complete and submit a Form 103 to Omnitrans designee by the 15th of each month until completion of the contract to facilitate reporting of all subcontractor payments, including DBE firms, following the first month of contract activity. The Contractor will report the total dollar value paid to all subcontractors, including DBEs, for the applicable reporting period. The Contractor will also report the subcontractor's scope of work and the total subcontract value of commitment for each subcontractor reported.

Upon completion of the contract, the Contractor will be required to prepare and submit to Omnitrans a "Summary Subcontractor Paid Monthly Report and Payment Verification" (Form 103) clearly marked "Final" to facilitate reporting and capturing actual subcontractor payments. Contractor will complete and submit a Final Form 103 whether or not DBEs were utilized in the performance of the contract.

Contractor is advised not to report the participation of DBEs toward the Contractor's race-neutral DBE attainment until the amount being counted has been paid to the DBE.

Contractor is responsible for providing subcontractor's proof of DBE Certification.

Contractor and subcontractors are subject to periodic audits by Omnitrans and or their designated representative. Program audits serve as a part of Omnitrans assessing program compliance. The audit may include comprehensive review of program related forms, documents and procedures, including but not limited to site visits. The information presented for review shall be provided in an auditable manner.

VI. DBE Eligibility and Commercially Useful Function Standards

- a. A DBE must be a small business concern as defined pursuant to Section 3 of the U.S. Small Business Act and relevant regulations promulgated pursuant thereto.
- b. A DBE may participate as a prime contractor, subcontractor, joint venture partner with a prime or subcontractor, vendor of material or supplies, or as a trucking company.
- c. A DBE joint venture partner must be responsible for specific contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- d. A DBE must perform a commercially useful function in accordance with 49 CFR 26.55 (i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.) A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce to presume it is performing a commercially useful function.
- e. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources:
 1. The CUCP website, accessed at <https://dot.ca.gov/programs/business-and-economic-opportunity/dbe-search>.

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Disadvantaged Business Enterprise (DBE) Program Requirements

2. The CUCP DBE Directory, which may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, CA 95815; Telephone (916) 445-3520.

VII. DBE Crediting Provisions

When a DBE is proposed to participate in the contract, either as a Prime Contractor or Subcontractor, only the value of the work proposed to be performed by the DBE with its own forces may be counted toward race-neutral DBE participation. If the Contractor is a DBE joint venture participant, only the DBE proportionate interest in the joint venture will be counted.

- a. If a DBE intends to subcontract part of the work of its subcontract to a lower tier Subcontractor, the value of the subcontracted work may be counted toward race-neutral DBE participation only if the DBE Subcontractor is a certified DBE and actually performs the work with their own forces. Services subcontracted to a non-DBE firm may not be credited toward the prime Contractor's race-neutral DBE attainment.
- b. Contractor is to calculate and credit participation by eligible DBE vendors of equipment, materials, and suppliers toward race-neutral DBE attainment, as follows:
 1. Sixty percent (60%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a regular dealer; or
 2. One hundred percent (100%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a DBE manufacturer.
- c. The following types of fee or commissions paid to DBE Subcontractors, Brokers, and Packagers may be credited toward the prime Contractor's race-neutral DBE attainment, provided that the fee or commission is reasonable, and not excessive, as compared with fees or commissions customarily allowed for similar work, including:
 1. Fees and commissions charged for providing bona fide professional or technical services, or procurement of essential personnel, facilities, equipment, materials, or supplies required in the performance of the Contract;
 2. Fees charged for delivery of material and supplies (excluding the cost of materials or supplies themselves) when the licensed hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the material and supplies;
 3. Fees and commissions charged for providing any insurance specifically required in the performance of the Contract.
- d. Contractor may count the participation of DBE trucking companies toward race-neutral DBE attainment, as follows:
 1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.
 2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

ATTACHMENT G

Disadvantaged Business Enterprise (DBE) Program Requirements

4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
6. For purposes of this paragraph, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
7. If the Contractor listed a non-certified DBE 1st tier Subcontractor to perform work on this contract, and the non-certified DBE subcontractor subcontracts a part of its work or purchases materials and/or supplies from a lower tier DBE certified Subcontractor or Vendor, the value of work performed by the lower tier DBE firm's own forces can be counted toward race-neutral DBE participation on the contract.

VIII. Performance of DBE Subcontractors

DBE subcontractors listed by the Prime Contractor in its "DBE Race-Neutral Participation Listing" submitted at the time of proposal submission or added during performance of the contract will perform the work and supply the materials for which they are listed, unless the Contractor has received prior written authorization from Omnitrans to perform the work with other forces or to obtain the materials from other sources.

The Contractor will provide written notification to Omnitrans in a timely manner of any changes to its anticipated DBE participation. This notice should be provided prior to commencement of that portion of the work and the Prime Contractor shall demonstrate good faith efforts in continuing doing business with DBE's.

Contractor cannot fully or partially terminate or substitute a DBE subcontractor without good cause and prior written consent from Omnitrans. This includes, but is not limited to, instances in which a prime seeks to perform work originally designated for a DBE with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm. If the Contractor fails to obtain written consent, the Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE(s). Contractor shall exercise good faith efforts to replace the original DBE subcontractor with another DBE firm for at least the same amount remaining on the original DBE's subcontract.

IX. Additional DBE Subcontractors

In the event Contractor identifies additional DBE subcontractors or suppliers not previously identified by Contractor for race-neutral DBE participation under the contract, Contractor will notify Omnitrans by submitting the form "DBE Race-Neutral Participation Listing" to enable Contractor and Omnitrans to capture all race-neutral DBE participation.

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Disadvantaged Business Enterprise (DBE) Program Requirements

X. DBE Certification Status

If a listed DBE subcontractor is decertified during the life of the project, the decertified subcontractor will notify the Contractor in writing with the date of decertification. The Contractor will furnish the written documentation to Omnitrans in a timely manner.

XI. Contractor's Assurance Clause Regarding Non-Discrimination

In compliance with State and Federal anti-discrimination laws, the Contractor will affirm that they will not exclude or discriminate on the basis of race, color, national origin, or sex in consideration of contract award opportunities. Further, the Contractor will affirm that they will consider, and utilize subcontractors and vendors, in a manner consistent with non-discrimination objectives.

Contractor (and each subcontract the Contractor signs with a subcontractor) must include the following assurance: Contractor or subcontractor 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 DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- a. Withholding monthly progress payments;
- b. Assessing sanctions;
- c. Liquidated damages; and/or
- d. Disqualifying the contractor from future bidding as non-responsible.

XII. Prompt Payment

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

ATTACHMENT G

Disadvantaged Business Enterprise (DBE) Program Requirements

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.

XIII. Records Retention

Prime Contractor shall maintain all DBE program records, including a thorough and updated bidder's list.

Omnitrans requires prime contractors to maintain records of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for Omnitrans' financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of Omnitrans or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

XIV. Bidders List

The U.S. Department of Transportation (DOT) requires Omnitrans to maintain a "Bidders List" containing information about all firms (DBE and non-DBE) that bid, propose or quote on Omnitrans' DOT-assisted contracts, in accordance with 49 CFR Part 26.11, for use in the Omnitrans' overall triennial DBE goal-setting process. Therefore, the Contractor shall provide at a minimum, the following requested information for every firm who submitted a quote, bid, or proposal, including the primary Contractor, whether successful or unsuccessful in their attempt to obtain a contract:

- a. Firm name
- b. Firm address
- c. Status of DBE or non-DBE
- d. Age of the business
- e. Range of annual gross receipts for the last year

A Bidders List form is attached for completion by Contractor. It is the responsibility of the Contractor to verify accuracy of information submitted by each subcontractor. The Bidders List content will not be considered in evaluating the bid/proposal or determining award of the contract.

**OMNITRANS
TERMS AND CONDITIONS OF PURCHASE**

1. **PURCHASE ORDER (P.O.)** Omnitrans shall not be responsible for goods or services provided to officials or employees without a duly authorized P.O.
2. **INVOICES.** Invoices shall be submitted under the same name as that which is shown on the face of this P.O. The P.O. number must appear on all invoices, shipping notices, delivery and packing slips, packages and correspondence. Each P.O. shall be invoiced separately. Submit invoices monthly or as prescribed by Omnitrans' Finance Dept.
Invoices shall reference the appropriate purchase order number and contract number. Contractor shall send invoices to:
 - accountspayable@omnitrans.org Finance
 - contracts@omnitrans.org ProcurementThe above does not apply to those Contractors whose invoices are also their packing slip, work order, delivery ticket, etc.
3. **PACKING SLIPS.** Packing slips must accompany each shipment unit (included with each package in shipment), showing Omnitrans' P.O. number, description, and part number for each item.
4. **ACCEPTANCE.** Goods are subject to Omnitrans' inspection and approval within a reasonable time after delivery. If specifications are not met or not approved, material may be returned at supplier's expense.
5. **DELIVERY.** Unless otherwise indicated on the face of this order, delivery shall be FOB destination. COD shipments will not be accepted. Deliveries for all departments must be made through Omnitrans' Receiving Department. Nonpayment may result for goods delivered in any other manner.
6. **PARTIAL DELIVERIES.** Shipments must be identified as partial or complete, along with the number of shipping units.
7. **MODIFICATIONS.** Supplier shall not make any alterations or change to this order in any fashion without prior written authorization from Omnitrans.
8. **WARRANTY.** Vendor warrants that the item(s) provided and/or work performed under this contract comply with all specifications, are free of liens and encumbrances, and that workmanship and materials are free from defects. Work shall comply with nationally recognized codes and established industry standards. Equipment shall carry the manufacturers' most favorable commercial warranties. The warranty period shall begin after acceptance of item(s) and/or work. Vendor agrees to remedy by replacing or repairing any item(s) that is damaged or defective during normal usage within the warranty period, at no additional cost to Omnitrans. Such repair or replacement shall occur within a reasonable time frame and to the satisfaction of Omnitrans.
9. **FEDERAL, STATE AND LOCAL LAWS.** All goods or services furnished pursuant to this P.O. shall comply with all CAL-OSHA standards and regulations and all applicable Federal, state and local laws and regulations.
10. **GOVERNING LAW.** This P.O. and the contract between the parties evidenced hereby or attached thereto shall be deemed to be made in the State of California and shall in all respects be construed and governed by the laws of that state.
11. **PATENT PROTECTION.** To the extent the subject articles are not manufactured pursuant to design originated by Omnitrans, supplier agrees it will indemnify and hold Omnitrans and its officers, agents, and employees harmless from any loss, damage or liability which may be incurred on account of any alleged infringement of any United States patent with respect to such articles or materials, and that it will, at its own expense, defend any action, suit or claim in which such infringement is alleged. Omnitrans agrees to notify supplier promptly of any suit or claim against Omnitrans for any alleged infringement of patent.
12. **DISADVANTAGED BUSINESS ENTERPRISE.** The supplier shall not discriminate based on race, color, national origin, or sex in the performance of this P.O.
13. **ENERGY CONSERVATION.** The supplier agrees to comply with the requirements of the Resource Conservation and Recovery Act, as amended, 42 USC §§6901 et seq.
14. **TITLE VI OF THE CIVIL RIGHTS ACTS OF 1964.** Supplier agrees to comply with all applicable requirements of Title VI of the Civil Rights Act of 1964, 42 USC § 2000d and USDOT regulations "Nondiscrimination in Federally Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act," 49 CFR, part 21.
15. **RECORD RETENTION.** The supplier shall make available within 30 days, upon request by Omnitrans, all records related to this P.O. for a period of up to three (3) years after closure.
16. **INSURANCE.** The supplier shall be required to provide a Certificate of Insurance for (1) Workers' Compensation in an amount to meet the requirements of the Labor Code of the State of California, including Employer's Liability with \$1,000,000 limits covering all persons including volunteers providing services on behalf of the supplier and all risks to such persons under this contract; (2) Commercial/General Liability (CGL) insurance covering all operations performed by or on behalf of the supplier, providing coverage for bodily injury and property damage with a \$1,000,000, per occurrence and \$2,000,000 general aggregate limit. The CGL policy coverage shall include: premises operations and mobile equipment; products and completed operations; broad form property damage; explosion, collapse and underground hazards; personal injury; contractual liability and (3) Auto Liability (AL) insurance with a combined single limit (CSL) of not less than \$1,000,000 per occurrence. CGL and AL must contain an endorsement that names Omnitrans as an additional insured with coverage at least as broad as Additional Insured (Form B) endorsement form ISO, CG 20 10 11 85.

17. **AMERICANS WITH DISABILITIES ACT.** The supplier agrees to comply with all the applicable requirements of the Americans with Disabilities Act of 1990, 42 USC §12101 et seq. in conjunction with this P.O.
18. **DRUG AND ALCOHOL POLICY.** It is the policy of Omnitrans that anyone, while on Agency property, is prohibited from unlawfully manufacturing, distributing, dispensing, possessing or using controlled substances or alcohol or illegally using or misusing legally prescribed drugs.
19. **INTEREST OF MEMBERS OF CONGRESS.** No member of or delegate to the Congress of the United States shall be admitted to any share or part of the P.O.
20. **INDEMNIFICATION.** The supplier shall indemnify, keep and save harmless Omnitrans, its agents, officials and employees from any and all claims, actions, losses, damages, and/or liability arising out of this P.O. from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by Omnitrans on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The supplier's indemnification obligation applies to Omnitrans' "active" as well as "passive" negligence but does not apply to Omnitrans' "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.
21. **FORCE MAJEURE (EVENTS BEYOND THE CONTROL OF THE SUPPLIER).** The supplier will not be held liable for failure of delay in fulfillment if hindered or prevented by act of God, fire, strike, loss or shortage of transportation facilities, lock-out, commandeering of materials, products, plants or facilities by government that are not reasonably foreseeable.
22. **ACKNOWLEDGMENT.** By delivery of the goods or services purchased herein, the supplier agrees to all the terms and conditions of this P.O.
23. **TERMINATION.** Omnitrans may terminate the P.O. in whole or in part for Omnitrans' convenience or because of the failure of the supplier to fulfill the contract obligation. Omnitrans' CEO/General Manager shall terminate by specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the supplier shall: (a) immediately discontinue all services affected and (b) deliver to Omnitrans' CEO/General Manager all data, drawings, specifications, reports, estimates, summaries and other information and materials accumulated in performing this contract, whether completed or in process. If the termination is for the convenience of Omnitrans, Omnitrans shall make an equitable adjustment in the P.O., but shall not allow anticipated profit on unperformed services.
24. **APPLICABILITY.** The Terms and Conditions stated herein will supersede or supplement the terms and conditions of any Omnitrans procurement wherein the terms and conditions were previously specified.
25. **OSHA COMPLIANCE.** The items covered by this P.O. must conform to safety orders of OSHA, CALOSHA, and /or NIOSH, and applicable Material Safety Data Sheets (MSDS). Vendor is required to provide a completed MSDS for all hazardous substances as required by Labor Code Sections 6390; General Industrial Safety Order, Section 5194; and Title 8, California Admins. Code. MSDS sheets need to be sent to Omnitrans' Safety and Regulatory Compliance Specialist for each specified item and a copy sent to Omnitrans' Procurement Department.
26. **QUESTIONS.** Questions regarding the Terms and Conditions of this P.O. are to be directed to the Procurement Department, phone 909.379.7146; fax: 909.379.7107; 1700 West Fifth Street, San Bernardino, CA 92411.

End of the Purchase Order Terms and Conditions

Date last revised: February 28, 2013



OmniTrans

IFB-MNT21-08

Account Manager: Mike Gazmen (562)320-3292

Email: mgazmen@papemh.com

Date: 7/30/20

Quote# OmniTransTC80 73020

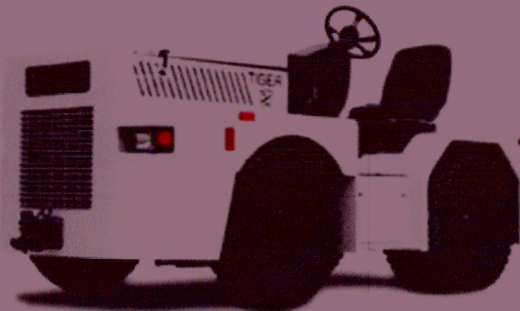
Sales Quotation Prepared By Mike Gazmen

Taylor Dunn TC80 Tow Tractor	Unit Price	Quantity	Total
New Taylor Dunn TC 80 Tow Tractor Speed: 13mp. Unit weight: 12,900lbs. Draw Bar Pull: 8,000lbs. Transmission: Ford C6. Brakes: Hydro Boost, front caliper/disc, rear drum, hand Operated independent parking brake. Tires: front 7.50 x 16.00 rear 7.50 x 16.00 dual Frame: Unibody steel frame w/ heavy duty front and rear plates. Steering: Hydrostatic. Instrumentation: Engine coolant temp, Voltmeter, fuel level, hour meter, Horn, alarm, engine shut down. Lights: Dual headlights, tail lights, brake lights, reverse lights. Seats: Driver vinyl bucket type adjustable. Color: white Tongue weight: 50lbs. Motor: GM V6 4.3 Liter gas 6-cylinder 150hp. Fuel tank: 16 gallons. Ignition switch: keyed.	\$86,165.00	2	\$172,330.00
Directional Signals	\$13.00	2	\$26.00
Back up Alarm	\$208.00	2	\$416.00
Hitch: Rear Coupler 1-13/16 Pin and Clevis	\$89.00	2	\$178.00
Special Option Request:	\$279.00	2	\$558.00
Rubber Push Blocks (similar to dock bumpers) with metal brackets. Welded to vehicle grill. 4 per vehicle. Customer must advise the desired position of the push blocks prior to production. Min order of 2 Vehicles.	\$583.00	2	\$1,166.00
Accessory tow straps. 40,000lbs capacity 30' in length. Welded steel rings. 4 per vehicle. Min order of 2 Vehicles	\$783.00	2	\$1,566.00
Amber Strobe light on a pole. Min order 2 vehicles	\$743.00	2	\$1,486.00
Blue LED pedestrian warning light. On adjustable bracket. Located at the front of the vehicle. Illuminates when the ignition is on and a forward gear is selected. Min order of 2 vehicles	\$406.00	2	\$812.00
Fire Extinguisher Amerex A500 5lbs drive chem ABC. Min order of 2 vehicles	\$215.00	2	\$430.00
Seatbelts, Retractable, with ignition interlock and audible alarm. Min order of 2 vehicles	\$800.00	2	\$1,600.00
Fleet Discount 17% off			(\$30,696.56)
Sub-Total			\$149,871.44
Sales Tax			\$11,615.03
In bound freight, prep and delivery			\$1,180.00
Total			\$162,666.47

ons of this quotation.

Title: _____

[papemh.com/terms](http://www.papemh.com/terms)



I accept the terms and conditions

Signed: _____

Name: _____

Terms: Net on delivery www.papemh.com/terms



VEHICLE WARRANTY

Taylor-Dunn Manufacturing Company (hereinafter referred to as TAYLOR-DUNN) warrants each new vehicle manufactured by TAYLOR-DUNN to be free from defects in material and workmanship under normal use and service, for a period of **[2 years or 2,000 hours, whichever event shall occur first, from date of delivery]**.

Warranty for component parts purchased by TAYLOR-DUNN from a third party and installed in any new vehicle shall be limited to the warranty of the component manufacturer.

TAYLOR-DUNN will repair or replace, at its option, if delivered to an authorized distributor, any vehicle or part that in TAYLOR-DUNN's opinion is defective.

All claims for defects must be processed through an authorized TAYLOR-DUNN distributor, using proper warranty claim procedures.

This warranty shall not apply to (i) normal wear and tear, (ii) any vehicle, part or equipment that has been altered, modified, or changed, or (iii) any vehicle, part or equipment that has been subject to misuse, abuse, neglect or accident.

THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The liability of TAYLOR-DUNN arising out of the sale, use or operation of any TAYLOR-DUNN vehicle, equipment or parts, whether in warranty, contract or negligence, including claims for special, indirect or consequential damages shall not in any event exceed the cost of furnishing a replacement for such defective vehicle, part or equipment as provided above. Upon the expiration of the warranty period described above, any such liability shall terminate. The foregoing warranty shall constitute the sole and exclusive liability of TAYLOR-DUNN.



Effective May 15, 2017

Attachment B

REGULATORY REQUIREMENT

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REGULATORY REQUIREMENTS

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

Required Clauses for All FTA-Assisted Third-Party Contracts and Subcontracts

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.

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 ADMINISTRATION (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 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
 - (a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, Contractor shall comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq. , (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal

Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of the Contract. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor shall comply with any implementing requirements FTA may issue.

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

RR-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 Omnitrans' DBE Program 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.
- 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 effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

Flow Down

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

- A. **Termination for Convenience (General Provision)** Omnitrans may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Omnitrans to be paid the Contractor. If the Contractor has any property in its possession belonging to the Omnitrans, the Contractor will account for the same, and dispose of it in the manner the Omnitrans directs.

- B. **Opportunity to Cure (General Provision)** Omnitrans in its sole discretion may, in the case of a termination for breach or default, allow the Contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

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

- C. **Waiver of Remedies for any Breach** In the event that Omnitrans elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by Omnitrans shall not limit Omnitrans remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

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

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

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

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

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.

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

BUY AMERICA *

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

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

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

RR-013

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

Applicability to Contracts

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

Flow Down

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

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

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

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

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

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

RR-014**CARGO PREFERENCE*****A. Applicability**

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

B. USE OF UNITED STATES FLAG VESSELS

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

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

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

RR-015**FLY AMERICA****A. Applicability**

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

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

RR-016**ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM *****A. Applicability**

This Article applies to federally funded contracts for transit operations.

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

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

C. Certificate of Compliance

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

D. Drug and Alcohol Testing Program

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

E. Alcohol and Drug Free Workplace Program

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

RR-017**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-018**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-019**RECYCLED PRODUCTS****A. Applicability**

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

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

RR-020**ADA ACCESS****A. Applicability**

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

B. Access Requirements for Persons with Disabilities

Contractor shall comply with:

1. The requirements of 49 U.S.C. § 5301(d), which states the Federal policy that elderly persons and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy;
2. All applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps;
3. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act;
4. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act; and
5. All applicable requirements of the following regulations and any subsequent amendments thereto:
 - (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
 - (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
 - (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
 - (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
 - (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
 - (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
 - (7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194; and
- (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609;
- (11) Any implementing requirements FTA may issue.

RR-021

ADMINISTRATIVE CODE *

A. Applicability

This Article applies to all contracts.

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

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

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

C. Campaign Contributions

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

RR-022
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-023
WHISTLEBLOWER REQUIREMENTS *

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

RR-024
PUBLIC RECORDS ACT *

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

RR-025

PRIVACY ACT - 5 U.S.C. 552

Applicability to Contracts

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

Flow Down

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

Model Clause/Language

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

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

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

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

RR-026

VETERANS PREFERENCE

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

END OF REGULATORY REQUIREMENTS

Disadvantaged Business Enterprise (DBE) Program Requirements

Disadvantaged Business Enterprise (DBE) Participation

I. Race-Neutral DBE Participation

The Contractor is required to submit a DBE Race-Neutral Participation Listing to identify DBE subcontractor(s) proposed in the performance of this U.S. DOT-assisted contract, and further agrees to ensure that DBE subcontractors listed in the “DBE Race-Neutral Participation Listing” perform work and/or supply materials in accordance with original commitments, unless otherwise directed and/or approved by the Omnitrans prior to the Prime Contractor effectuating any changes to its race-neutral DBE participation commitments. The Contractor is required to submit this form whether or not DBE subcontractors have been proposed.

Prime Contractor shall ensure the DBE information submitted shall include the North American Industry Classification System (NAICS) code applicable to the kind of work the DBE subcontractor(s) will perform on the contract.

In the event the Contractor commits to utilizing a DBE in the performance of this contract after contract award, the Contractor will comply with the same reporting requirements delineated above and submit a “DBE Race-Neutral Participation Listing” for new DBE commitments made after award and during contract performance.

II. DBE Policy and Applicability

In accordance with federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), Omnitrans has adopted a Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR, Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Programs”.

The project is subject to these stipulated regulations and Omnitrans’ DBE Program. In order to ensure that Omnitrans achieves its overall DBE Program goal, Omnitrans encourages the participation of DBEs as defined in 49 CFR, Part 26 in the performance of contracts financed in whole or in part with U.S. DOT funds. Pursuant to the intent of these regulations, it is also the policy of Omnitrans to:

Fulfill the spirit and intent of the Federal DBE Program regulations published under U.S. DOT Title 49 CFR, Part 26, by ensuring that DBE’s have equitable access to participate in all of Omnitrans’ and identified Prime Contractor DOT-assisted contracting opportunities.

- a. Ensure that DBEs can fairly compete for and perform on all DOT-assisted contracts and subcontracts.
- b. Ensure non-discrimination in the award and administration of Omnitrans’ DOT-assisted contracts.
- c. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
- d. Ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs in DOT-assisted contracts.
- e. Help remove barriers to the participation of DBEs in DOT-assisted contracts.
- f. Assist in the development of firms that can compete successfully in the marketplace outside the DBE Program.

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Contractor will not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

Any terms used in this section that is defined in 49 CFR, Part 26, or elsewhere in the Regulations, will have the meaning set forth in the Regulations. In the event of any conflicts or inconsistencies between the Regulations and Omnitrans' DBE Program with respect to DOT-assisted contracts, the Regulations will prevail.

III. Omnitrans' Race-Neutral DBE Policy Implementation Directives

Pursuant to Race-Neutral DBE policy directives issued by the U.S. DOT in response to the Ninth Circuit U.S. Court of Appeals decision in *Western States Paving Co. v. Washington State Department of Transportation*, Omnitrans has implemented a wholly Race-Neutral DBE Program.

A Race-Neutral DBE Program is one that, while benefitting DBEs, is not solely focused on DBE firms. Therefore, under a Race-Neutral DBE Program, Omnitrans does not establish numeric race-conscious DBE participation goals on its DOT-assisted contracts. However, the Prime Contractor will adhere to race-neutral DBE participation commitments made at the time of contract award.

IV. Definitions

The following definitions apply to the terms as used in these provisions:

- a. "Disadvantaged Business Enterprise (DBE)" means a small business concern: (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- b. "Socially and Economically Disadvantaged Individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans, women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, or by Omnitrans pursuant to 49 CFR part 26.65. Members of the following groups are presumed to be socially and economically disadvantaged:
 1. "Black Americans" which includes persons having origins in any of the Black racial groups of Africa;
 2. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 3. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 4. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;

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5. “Asian-Indian Americans,” which includes persons whose origins are from India, Pakistan, and Bangladesh; and
 6. Women, regardless of ethnicity or race.
- c. “Owned and Controlled” means a business: (a) which is at least 51 percent owned by one or more “Socially and Economically Disadvantaged Individuals” or, in the case of a publicly-owned business, at least 51 percent of the stock of which is owned by one or more “Socially and Economically Disadvantaged Individuals”; and (b) whose management and daily business operations are controlled by one or more such individuals.
 - d. “Manufacturer” means a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the contractor.
 - e. “Regular Dealer” means a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. The firm must engage in, as its principal business, and in its own name, the purchase and sale of the product in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock if it owns or operates distribution equipment.
 - f. “Other Socially and Economically Disadvantaged Individuals” means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who, on a case-by-case basis, are determined by Small Business Administration or certifying agency under the California Unified Certification Program (CUCP) to meet the social and economic disadvantage criteria described in 49 CFR Part 26.67.
- V. Race-Neutral DBE Submission and Ongoing Reporting Requirements (Post- Award)

Contractor shall report both DBE and non-DBE subcontractor payment details to Omnitrans using the web-based system by the 15th of each month. The web-based system allows Contractor to manage their own records, maintain accurate contract award information, and report subcontractor payment details online.

Use of the web-based system is mandatory for the Contractor and subcontractor to use unless Omnitrans instructs otherwise in writing to Contractor. A Contractor account will be created after award, which will allow Contractor to enter data into the web-based system via an internet browser. After award, Contractor will receive instructions to set up their account and enter required subcontractor data. Contractor must require each of its subcontractors to enter required payment verification information into the web-based system. Subcontractors with lower tier subcontractors must require lower tier subcontractors to enter required payment data into the web-based system. Failure of Contractor or its subcontractors to enter required information on a timely basis may result in delay of payment by Omnitrans and may subject Contractor to withholding of payments or penalties for noncompliance.

If Omnitrans approves in writing the use of a form instead of the web-based system to report monthly payments to subcontractors, Contractor will complete and submit the following exhibit at the times specified:

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Disadvantaged Business Enterprise (DBE) Program Requirements

Summary Subcontractors Paid Monthly Report and Payment Verification: (Requires Omnitrans Approval in Writing).

The Contractor will be required to complete and submit a Form 103 to Omnitrans designee by the 15th of each month until completion of the contract to facilitate reporting of all subcontractor payments, including DBE firms, following the first month of contract activity. The Contractor will report the total dollar value paid to all subcontractors, including DBEs, for the applicable reporting period. The Contractor will also report the subcontractor's scope of work and the total subcontract value of commitment for each subcontractor reported.

Upon completion of the contract, the Contractor will be required to prepare and submit to Omnitrans a "Summary Subcontractor Paid Monthly Report and Payment Verification" (Form 103) clearly marked "Final" to facilitate reporting and capturing actual subcontractor payments. Contractor will complete and submit a Final Form 103 whether or not DBEs were utilized in the performance of the contract.

Contractor is advised not to report the participation of DBEs toward the Contractor's race-neutral DBE attainment until the amount being counted has been paid to the DBE.

Contractor is responsible for providing subcontractor's proof of DBE Certification.

Contractor and subcontractors are subject to periodic audits by Omnitrans and or their designated representative. Program audits serve as a part of Omnitrans assessing program compliance. The audit may include comprehensive review of program related forms, documents and procedures, including but not limited to site visits. The information presented for review shall be provided in an auditable manner.

VI. DBE Eligibility and Commercially Useful Function Standards

- a. A DBE must be a small business concern as defined pursuant to Section 3 of the U.S. Small Business Act and relevant regulations promulgated pursuant thereto.
- b. A DBE may participate as a prime contractor, subcontractor, joint venture partner with a prime or subcontractor, vendor of material or supplies, or as a trucking company.
- c. A DBE joint venture partner must be responsible for specific contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- d. A DBE must perform a commercially useful function in accordance with 49 CFR 26.55 (i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.) A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce to presume it is performing a commercially useful function.
- e. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources:
 1. The CUCP website, accessed at <https://dot.ca.gov/programs/business-and-economic-opportunity/dbe-search>.

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2. The CUCP DBE Directory, which may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, CA 95815; Telephone (916) 445-3520.

VII. DBE Crediting Provisions

When a DBE is proposed to participate in the contract, either as a Prime Contractor or Subcontractor, only the value of the work proposed to be performed by the DBE with its own forces may be counted toward race-neutral DBE participation. If the Contractor is a DBE joint venture participant, only the DBE proportionate interest in the joint venture will be counted.

- a. If a DBE intends to subcontract part of the work of its subcontract to a lower tier Subcontractor, the value of the subcontracted work may be counted toward race-neutral DBE participation only if the DBE Subcontractor is a certified DBE and actually performs the work with their own forces. Services subcontracted to a non-DBE firm may not be credited toward the prime Contractor's race-neutral DBE attainment.
- b. Contractor is to calculate and credit participation by eligible DBE vendors of equipment, materials, and suppliers toward race-neutral DBE attainment, as follows:
 1. Sixty percent (60%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a regular dealer; or
 2. One hundred percent (100%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a DBE manufacturer.
- c. The following types of fee or commissions paid to DBE Subcontractors, Brokers, and Packagers may be credited toward the prime Contractor's race-neutral DBE attainment, provided that the fee or commission is reasonable, and not excessive, as compared with fees or commissions customarily allowed for similar work, including:
 1. Fees and commissions charged for providing bona fide professional or technical services, or procurement of essential personnel, facilities, equipment, materials, or supplies required in the performance of the Contract;
 2. Fees charged for delivery of material and supplies (excluding the cost of materials or supplies themselves) when the licensed hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the material and supplies;
 3. Fees and commissions charged for providing any insurance specifically required in the performance of the Contract.
- d. Contractor may count the participation of DBE trucking companies toward race-neutral DBE attainment, as follows:
 1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.
 2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

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4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
6. For purposes of this paragraph, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
7. If the Contractor listed a non-certified DBE 1st tier Subcontractor to perform work on this contract, and the non-certified DBE subcontractor subcontracts a part of its work or purchases materials and/or supplies from a lower tier DBE certified Subcontractor or Vendor, the value of work performed by the lower tier DBE firm's own forces can be counted toward race-neutral DBE participation on the contract.

VIII. Performance of DBE Subcontractors

DBE subcontractors listed by the Prime Contractor in its "DBE Race-Neutral Participation Listing" submitted at the time of proposal submission or added during performance of the contract will perform the work and supply the materials for which they are listed, unless the Contractor has received prior written authorization from Omnitrans to perform the work with other forces or to obtain the materials from other sources.

The Contractor will provide written notification to Omnitrans in a timely manner of any changes to its anticipated DBE participation. This notice should be provided prior to commencement of that portion of the work and the Prime Contractor shall demonstrate good faith efforts in continuing doing business with DBE's.

Contractor cannot fully or partially terminate or substitute a DBE subcontractor without good cause and prior written consent from Omnitrans. This includes, but is not limited to, instances in which a prime seeks to perform work originally designated for a DBE with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm. If the Contractor fails to obtain written consent, the Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE(s). Contractor shall exercise good faith efforts to replace the original DBE subcontractor with another DBE firm for at least the same amount remaining on the original DBE's subcontract.

IX. Additional DBE Subcontractors

In the event Contractor identifies additional DBE subcontractors or suppliers not previously identified by Contractor for race-neutral DBE participation under the contract, Contractor will notify Omnitrans by submitting the form "DBE Race-Neutral Participation Listing" to enable Contractor and Omnitrans to capture all race-neutral DBE participation.

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X. DBE Certification Status

If a listed DBE subcontractor is decertified during the life of the project, the decertified subcontractor will notify the Contractor in writing with the date of decertification. The Contractor will furnish the written documentation to Omnitrans in a timely manner.

XI. Contractor's Assurance Clause Regarding Non-Discrimination

In compliance with State and Federal anti-discrimination laws, the Contractor will affirm that they will not exclude or discriminate on the basis of race, color, national origin, or sex in consideration of contract award opportunities. Further, the Contractor will affirm that they will consider, and utilize subcontractors and vendors, in a manner consistent with non-discrimination objectives.

Contractor (and each subcontract the Contractor signs with a subcontractor) must include the following assurance: Contractor or subcontractor 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 DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- a. Withholding monthly progress payments;
- b. Assessing sanctions;
- c. Liquidated damages; and/or
- d. Disqualifying the contractor from future bidding as non-responsible.

XII. Prompt Payment

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

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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.

XIII. Records Retention

Prime Contractor shall maintain all DBE program records, including a thorough and updated bidder's list.

Omnitrans requires prime contractors to maintain records of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for Omnitrans' financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of Omnitrans or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

XIV. Bidders List

The U.S. Department of Transportation (DOT) requires Omnitrans to maintain a "Bidders List" containing information about all firms (DBE and non-DBE) that bid, propose or quote on Omnitrans' DOT-assisted contracts, in accordance with 49 CFR Part 26.11, for use in the Omnitrans' overall triennial DBE goal-setting process. Therefore, the Contractor shall provide at a minimum, the following requested information for every firm who submitted a quote, bid, or proposal, including the primary Contractor, whether successful or unsuccessful in their attempt to obtain a contract:

- a. Firm name
- b. Firm address
- c. Status of DBE or non-DBE
- d. Age of the business
- e. Range of annual gross receipts for the last year

A Bidders List form is attached for completion by Contractor. It is the responsibility of the Contractor to verify accuracy of information submitted by each subcontractor. The Bidders List content will not be considered in evaluating the bid/proposal or determining award of the contract.