



BOARD OF DIRECTORS MEETING
WEDNESDAY, MARCH 1, 2017 – 8:00 A.M.
OMNITRANS METRO FACILITY
1700 WEST 5TH STREET
SAN BERNARDINO, CA 92411

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

A. CALL TO ORDER

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

B. ANNOUNCEMENTS/PRESENTATIONS

1. Next Board Meeting: Wednesday, April 5, 2017 – 8:00 a.m.
Omnitrans Metro Facility Board Room
2. Employee of the Year Award
3. One Million-Mile Award

C. COMMUNICATIONS FROM THE PUBLIC

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

D. POSSIBLE CONFLICT OF INTEREST ISSUES

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

E. CONSENT CALENDAR

The following items are expected to be routine and non-controversial. The Board will act upon them at one time without discussion, unless the Board directs that an item be held for further discussion under Agenda Item F, Discussion Items. Any person wishing to address consent items should address the Board under Agenda Item #E11 Action on Consent Calendar.

- | | |
|---|----|
| 1. Approve Board Minutes – February 1, 2017 | 7 |
| 2. Receive and File Executive Committee Minutes – December 7, 2016 | 12 |
| 3. Receive File Administrative & Finance Committee Minutes- December 15, 2016 | 16 |
| 4. Receive and File – VTrans Board Minutes – September 21, 2016 | 20 |



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E. CONSENT CALENDAR CONTINUED

- | | |
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| 5. Receive and File Construction Progress Report No. 55 through January 31, 2017 – sbX E Street Corridor BRT Project | 22 |
| 6. Receive and File Fiscal Year Ended June 30, 2016 Audit Reports | 30 |
| 7. Authorize Award – Contract FIN17-61, Credit/Debit Card Processing and Merchant Services | 33 |
| 8. Adopt Resolution No. 298-17, Authorize Execution of the Certification and Assurances for Fiscal Year 2016-2017 Low Carbon Transit Operations Program (LCTOP) | 55 |
| 9. Adopt Resolution No. 299-17, Authorize Application Filing and Requests for Reimbursements – California Transit Security Grant Program Funding – (CTSGP) for Fiscal Year 2016-2017 | 58 |
| 10. Authorize CEO/General Manager to Execute Transfer Agreement with Riverside County Transportation Commission | 60 |
| 11. Action on Consent Calendar | |

F. DISCUSSION ITEMS

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

- | | |
|---|-----|
| 1. CEO/General Manager's Report | 68 |
| 2. Approve Special Transit Services Fiscal Year 2016/2017 Budget | 69 |
| 3. Authorize Award – Purchase Orders ITS17-46, Datacenter and Hardware Refresh | 71 |
| 4. Authorize Award – Purchase Orders ITS17-60, Network Monitoring Software Licensing | 74 |
| 5. Authorize Award (Bench) – Contract No. MNT17-01K, Approve Amendment 1 to Contracts MNT17-01G and MNT17-01I, Rebuilt Parts and Services | 76 |
| 6. Direct Omnitrans Staff and Legal Counsel – Special Legislation to Change Omnitrans from a Joint Powers Authority to a Statutorily Created Special Transit District | 149 |

G. PUBLIC HEARING

- | | |
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| 1. Close Public Hearing – Federal Transit Administration Section 5310 Capital Assistance for Fiscal Year 2015-2017 | 174 |
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H. BOARD BUSINESS

Closed Session

- | | |
|---|--|
| 1. Public Employee Performance Evaluation – Chief Executive Officer/General Manager pursuant to Government Code Section 54957 | |
| 2. Conference with Labor Negotiator P. Scott Graham regarding Management Confidential Classifications for Non-Represented employees pursuant to Government Code 54957.6 | |



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H. BOARD BUSINESS CONTINUED

Open Session

1. Adopt Proposed Changes to Personnel Policy #402 – Salary Ranges – Management Confidential Classifications for Non-Represented Employees, effective March 1, 2017

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I. REMARKS AND ANNOUNCEMENTS

J. ADJOURNMENT

ITEM # D1

DATE: March 1, 2017

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

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

FORM MOTION

Staff hereby provides a listing of principals and subcontractors associated with action items on the agenda for the Board of Director's Meeting scheduled March 1, 2017.

Item	Contract	Principals & Agents	Subcontractors
#E7	Authorize Award Contract FIN17-61 Credit/Debit Card Processing and Merchant Services	<i>Fidelity Information Services LLC Jacksonville FL Helen Justice, Business Line Executive, Biller Solutions</i>	<i>N/A</i>
#F3	Authorize Award Purchase Orders ITS17-46 Datacenter and Hardware Refresh	<i>PC Specialists, Inc. dba Technology Integration Group San Diego, CA Tom Janecek, COO</i>	<i>None</i>
		<i>Helixstorm, LLC Temecula, CA Aaron Schneider, Principal</i>	<i>None</i>
		<i>Xceptional Networks, Inc. San Diego, CA Chris Mckewon, CEO</i>	<i>None</i>
		<i>GovConnecton, Inc. dba Connection Public Sector Solutions Rockville, MD Robert Howard, President</i>	<i>Mobilematics San Jose, CA</i>
#F4	Authorize Award Purchase Orders ITS17-60 Network Monitoring Software Licensing	<i>OzNet Systems, Inc. Altadena, CA Anthony Ozogu, President/CEO</i>	<i>None</i>

Item	Contract	Principals & Agents	Subcontractors
#F5	Authorize Award (Bench) Contract MNT17-01K and Amendment 1	<i>The Janek Corporation Tuckerton, NJ Chris Apgar, Vice President</i>	<i>None</i>
	Contracts MNT17-01G and MNT17-01I Rebuilt Parts and Services	<i>Complete Coach Works Riverside, CA Dale E. Carson, President</i>	<i>None</i>
		<i>Kirk's Automotive, Inc. Detroit, MI Robert Kirkman, President</i>	<i>None</i>

PSG:JMS



CONFLICT OF INTEREST FORM

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

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

BOARD MEMBER INFORMATION

BOARD MEMBER NAME	CITY/COUNTY NAME	MEETING DATE

CAMPAIGN CONTRIBUTIONS

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

FINANCIAL INTEREST

1. I have a financial interest of _____
State income, real property interest or business position

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

SIGNATURE

Board Member Signature

Date

ITEM # _____ E1 _____

**BOARD OF DIRECTORS' MEETING
MINUTES OF FEBRUARY 1, 2017**

A. CALL TO ORDER

Chairman Sam Spagnolo called the regular meeting of the Omnitrans Board of Directors to order at 8:00 a.m., Wednesday, February 1, 2017, at the Omnitrans Facility located at 1700 West 5th Street, San Bernardino, California.

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

BOARD MEMBERS PRESENT

Mayor Pro Tem Sam Spagnolo, City of Rancho Cucamonga – Chairman
Council Member Ron Dailey, City of Loma Linda – Vice Chairman
Council Member David Avila, City of Yucaipa
Mayor Carey Davis, City of San Bernardino
Mayor Richard DeLaRosa, City of Colton
Mayor Paul Eaton, City of Montclair
Mayor Paul Foster, City of Redlands - Alternate
Supervisor Josie Gonzales, County of San Bernardino
Council Member Ed Graham, City of Chino Hills
Supervisor Curt Hagman, County of San Bernardino
Council Member Bill Hussey, City of Grand Terrace - Alternate
Council Member Penny Lilburn, City of Highland
Council Member John Roberts, City of Fontana
Mayor Deborah Robertson, City of Rialto
Supervisor Janice Rutherford, County of San Bernardino
Mayor Debbie Stone, City of Upland
Mayor Eunice Ulloa, City of Chino
Council Member Alan Wapner, City of Ontario

BOARD MEMBERS NOT PRESENT

Supervisor Robert Lovingood, County of San Bernardino
Supervisor James Ramos, County of San Bernardino

OMNITRANS' ADMINISTRATIVE STAFF PRESENT

P. Scott Graham, CEO/General Manager
Diane Caldera, Director of Operations
Jack Dooley, Director of Maintenance
Marge Ewing, Director of Human Resources, Safety & Regulatory Compliance
Samuel Gibbs, Director of Internal Audit
Andres Ramirez, IPMO Manager
Jennifer Sims, Director of Procurement
Doug Stanley, Interim Director of Special Transit Services
Don Walker, Director of Finance
Wendy Williams, Director of Marketing/Planning
Omar Bryant, Maintenance Manager
Barbara Erwin, Safety & Security Regulatory Compliance Manager
Bethany Fernley, Projects Analyst
Ray Maldonado, Employee Relations Manager
Maurice Mansion, Treasury Manager
Kathy McClure, Contracts Administrator, Senior
Eugenia Pinheiro, Contracts Manager
Krystal Turner, Contracts Administrator
Christine Van Matre, Contracts Administrator
Vicki Dennett, Senior Executive Assistant to CEO/General Manager

LEGAL COUNSEL

Haviva Shane, Legal Counsel

B. ANNOUNCEMENTS/PRESENTATIONS

1. Next Board Meeting: Wednesday, March 1, 2017, 8:00 a.m.
Omnitrans Metro Facility Board Room

Chairman Spagnolo and CEO/General Manager P. Scott Graham, along with their respective department director, presented the Employee of the Quarter Award to Christina Diaz.

Chairman Spagnolo and CEO/General Manager P. Scott Graham, along with their respective department director, presented One-and Two-Million Mile Awards to the following recipients: One Million Miles – Toni Meza, Mike Morrow, Elizabeth Samaro, Sal Soto, Clarissa VanDyke, and Dago Perez; Two-Million Miles – Jerry Milton.

Chairman Spagnolo and the Board congratulated CEO/General Manager, P. Scott Graham on his 11th Year Anniversary with Omnitrans today.

Member Hagman arrived at 8:13 a.m.

Chairman Spagnolo introduced Omnitrans new Legal Counsel, Haviva Shane from Best Best & Krieger.

C. COMMUNICATIONS FROM THE PUBLIC

There were no public comments.

D. POSSIBLE CONFLICT OF INTEREST ISSUES

There were no Conflict of Interest Issues.

E. CONSENT CALENDAR

1. Approve Board Minutes – January 4, 2017
2. Receive and File Agency Management Report – Fiscal Year 2017 Second Quarter Report
3. Receive and File Affirmative Action Status Report – As of January 13, 2017
4. Receive and File sbX E Street Corridor BRT Project – Fiscal Year 2017 Second Quarter Report – December 2016
5. Receive and File Key Performance Indicators – Fiscal Year 2017 Second Quarter Report
6. Receive and File Management Strategic Plan Initiatives – Fiscal Year 2017 Second Quarter Report
7. Authorize Release, Request for Proposals – RFP-HRS17-68 – Employee Recognition Awards
8. Authorize Release, Request for Proposals – MNT17-69 – Bus Cleaning Services
9. Authorize Release – Invitation for Bids – IFB-MKP17-65 – Fare Media Printing Services
10. Authorize Release – Invitations for Bids – IFB-MNT17-70 – Coolant Supply Services
11. Adopt Resolution No. 296-17, Authorize Application Filing and Requests for Reimbursements – California Transit Security Grant Program Funding – (CTSGP) for Fiscal Year 2015-2016
12. Adopt Resolution No. 297-17, Certifying that No Non-Profit Organization is Available to Carry Out Service – Federal Fiscal Year 2015-2017, Section 5310 FTA Grant Program
13. Adopt 2017 Investment Policy
14. Re-Appoint Sam Spagnolo to Valley Transportation Services Board of Directors
15. Press Articles and Letters of Interest

CEO/General Manager, P. Scott Graham noted two corrections to Item E2, Agency Management Report on page 11. He stated that the Farebox Recovery Ratio for Access should be 28.43% and the YTD number for 2nd Quarter 2017 should be 26.86.

M/S (Ulloa/Delarosa) that approved Consent Calendar. Members Gonzales and Robertson abstained. Motion was approved by remaining Members present.

F. DISCUSSION ITEMS

1. CEO/General Manager's Report

CEO/General Manager P. Scott Graham reviewed the CEO/General Manager's Report.

Andres Ramirez, IPMO Manager presented a brief on the status of the Compressed Natural Gas Project.

Member Gonzales exited the meeting at 8:17 and returned at 8:18 a.m.

Member Lilburn exited the meeting 8:19 a.m. and returned at 8:25 a.m.

2. Authorize Award – Contract MNT-17-40 – Automotive Parts

M/S (Wapner/Hagman) that authorized the the CEO/General Manager to award Contract MNT17-40 to Factory Motor Parts of Eagan, Minnesota, for the provision of Automotive Parts for a two (2) year base period beginning February 2017, and the authority to exercise three (3) single option years extending the contract to no later than January 2022, in the amount of \$449,629, plus a ten percent contingency of \$44,962, for a total not-to-exceed amount of \$494,591, should all options years be exercised.

Member Wapner requested that future contract items include the name of the city in which the bidders are located.

Motion was unanimous by Members present.

3. Authorize Award – Contract OPS17-12 – On Board Video Surveillance System (OBVSS)

M/S (Wapner/Hagman) that authorized the CEO/General Manager to award Contract OPS17-12 to Transit Solutions LLC of Zelienople, PA, for the provision of Onboard Video Surveillance System (OBVSS) in the amount of \$1,654,524, plus a ten percent contingency of \$165,452, and a 3.27% Cost Allocation Plan (CAP) of \$43,283, for a not to exceed total amount of \$1,863,234.

The Board engaged in a discussion and some questions were raised regarding the possibility of integrating the system with the community and partnering cities.

Chairman Spagnolo directed that this item be referred to the Plans and Programs committee for further discussion.

Vice-Chair Dailey exited the meeting at 8:38 a.m. and returned at 8:42 a.m. prior to the vote on this item.

Motion was unanimous by Members present.

4. Authorize Amendment No. 2 – City of Rialto Metrolink and Omnitrans Funding Agreement for Rialto Metrolink Parking Lot Expansion

Member Robertson stated that while she did not identify a Conflict of Interest, since this item pertained to the City of Rialto, she excused herself and left the room during the discussion and vote on this item.

M/S (Hagman/Gonzales) authorized the CEO/General Manager to approve Amendment No. 2, which authorizes the City of Rialto to continue to use FTA funds originally awarded on April 12, 2011 for the Metrolink expansion project. Funds must be fully exhausted within the period of one (1) year. Motion was approved by Members present.

G. PUBLIC HEARING

1. Call for Public Hearing – Federal Transit Administration Section 5310 Capital Assistance

Chairperson Spagnolo announced that a public hearing concerning the Federal Transit Administration Section 5310 Capital Assistance is scheduled for Wednesday, March 1, 2017, at 8:00 a.m. at the Omnitrans Metro Facility, 1700 West Fifth Street, San Bernardino, CA 92411.

H. BOARD BUSINESS

The Board adjourned into Closed Session at 8:51 a.m.

1. Conference with Labor Negotiator P. Scott Graham concerning labor negotiations with Teamsters Union Local No. 166 regarding the Maintenance and Administrative Support Unit, pursuant to Government Code Section 54957.6

Open Session reconvened at 9:05 a.m. General Counsel Haviva Shane reported that the Board approved the terms of the contract contingent upon the Teamsters' Union vote at their meeting scheduled for February 8, 2017.

I. REMARKS AND ANNOUNCEMENTS

Member Davis referred to the Omnitrans Connects publication where it mentioned a 22% increase (742,000 passengers) to sbX ridership, and asked approximately how many vehicles that service removed from the roads. Director of Marketing/Planning, Wendy Williams did not have the information on-hand but will follow up with Member Davis.

Member Lilburn asked if the names of Omnitrans employees being recognized could be shared with their respective cities in order to perhaps recognize them at their local City Council Meeting, as well.

J. ADJOURNMENT

The Board adjourned at 9:07 a.m. The next regular meeting is scheduled Wednesday, March 1, 2017, at 8:00 a.m., with location posted on the Omnitrans website and at Omnitrans' San Bernardino Metro Facility.

Prepared by:

Araceli Barajas, Executive Staff Assistant



**EXECUTIVE COMMITTEE MEETING
MINUTES
DECEMBER 7, 2016**

The Executive Committee Meeting was called to order by Chair Sam Spagnolo at 12:10 p.m., Friday, December 7, 2016 at the San Bernardino County Transportation Authority Administrative Offices.

Mayor Pro Tem Sam Spagnolo, City of Rancho Cucamonga – Board Chair
Council Member Ron Dailey, City of Loma Linda – Board Vice Chair
Council Member Ed Graham, City of Chino Hills
Council Member Penny Lilburn, City of Highland
Council Member Alan Wapner, City of Ontario

Council Member John Roberts, City of Fontana

P. Scott Graham, CEO/General Manager
Vicki Dennett, Senior Executive Assistant to CEO/General Manager

Next Committee Meeting: Friday, January 6, 2017, 9:00 a.m.
Omnitrans Metro Facility

There were no communications from the public.

There were no Conflict of Interest Issues.

E. DISCUSSION ITEMS

1. Approve Executive Committee Minutes – September 2, 2016

M/S (Graham/Wapner) that approved the Executive Committee Minutes of September 2, 2016. Motion was unanimous by Members present.

2. Adopt Calendar Year 2017 Executive Committee Schedule

M/S (Graham/Lilburn) that adopted Calendar Year 2017 Executive Committee Schedule, set for 9:00 a.m., the first Friday of each month:

January 6, 2017
February 3, 2017
March 3, 2017
April 7, 2017
May 5, 2017
June 2, 2017
July 7, 2017
August 4, 2017
September 1, 2017
October 6, 2017
November 3, 2017
December 1, 2017

Motion was unanimous by Members present.

3. West Valley Connector Update – Discussion

Executive Director Dr. Ray Wolfe, San Bernardino County Transportation Authority (SBCTA), reported that the purpose of this item was to provide an update on the proposal for SBCTA to take over the West Valley Connector Project. He stated that the idea for this project was to have a two-phased approach. The first phase would be the implementation of an Express Line and the second phase would be a more long-term project, with the implementation of a full Bus Rapid Transit (BRT).

Dr. Wolfe explained that the recommendation is for SBCTA to assume the responsibility of project development and Omnitrans to provide the operational aspect of the project. He referred to a similar collaboration between the agencies with the Redlands Rail Project which was expected to be in service in 2020.

Dr. Wolfe explained that the recommendation to transfer the West Valley Connector Project development to SBCTA would be presented to their Transit Committee next week for approval. He mentioned that after several discussions, it was determined that the original anticipated cost of the project would not be enough, particularly in regards to the Right-of-Way acquisitions. Dr. Wolfe indicated that SBCTA and Omnitrans staff would be developing a more realistic cost and project delivery schedule.

Member Wapner thanked both P. Scott Graham and Dr. Ray Wolfe for working together on this project and for improving the relationship between SBCTA and Omnitrans. He expressed his support for the defined roles and responsibilities of the two agencies. Member Wapner mentioned the Redlands Rail Project and appreciated that Omnitrans would be handling the rail operations portion of the project. He also expressed his support for the West Valley Connector Project being a phased-in approach beginning with the implementation of the Express Service as the acquisition portion was being worked through.

Member Wapner clarified that the proceeds of the land sell in the City of Rancho Cucamonga would go directly back into the project with Omnitrans.

Member Dailey referred to the cost and schedule estimates and asked if his staff had any reports on the increases. Dr. Wolfe responded that perhaps a more in-depth analysis of the project would be available in March or April. Member Dailey asked if there were any estimates on how long the delay would be. Dr. Wolfe responded that it would be a couple of more years.

Member Lilburn echoed Member Wapner's comment regarding the improved relationship between SBCTA and Omnitrans. She also appreciated that other alternatives were being looked at for the West Valley Connector corridor.

Chair Spagnolo expressed his support for the roles and responsibilities of the agencies and agreed with the phased in approach beginning with an Express Service. He stated that previously, there had been some issues with competition for the same grant programs and was glad to see that everyone was working together.

Director Wapner referred to the Small Starts application and stated that whatever action or recommendation was taken by the Executive Committee today, that all be in agreement to support that SBCTA's application for this year and next year they support ours.

P. Scott Graham stated that he was pleased to be working with SBCTA on the Redlands Rail Project and now on the West Valley Connector Project. He thanked everyone for their support.

M/S (Lilburn/Wapner) that recommended the Board adopt the definition of roles and responsibilities for the West Valley Connector Project. Motion was unanimous by Members present.

F. BOARD BUSINESS

There was no Closed Session.

G. REMARKS AND ANNOUNCEMENTS

There were no remarks or announcements.

H. ADJOURNMENT

The Committee adjourned at 12:29 p.m. The next Executive Committee Meeting is scheduled Friday, January 6, 2017, at 9:00 a.m., with location posted on the Omnitrans website and at the Omnitrans San Bernardino Metro Facility.

Prepared by:

Araceli Barajas, Executive Staff Assistant

ITEM # _____ E3

**ADMINISTRATIVE & FINANCE COMMITTEE
MINUTES, DECEMBER 15, 2016**

A. CALL TO ORDER

Chairman Ed Graham called the regular meeting of the Administrative and Finance Committee to order at 8:00 a.m., Thursday, December 15, 2016.

1. Pledge of Allegiance
2. Roll Call

Committee Members Present

Council Member Ed Graham, City of Chino Hills – Committee Chair
Mayor Carey Davis, City of San Bernardino
Mayor Paul Eaton, City of Montclair
Council Member Patricia Gilbreath, City of Redlands
Supervisor Curt Hagman, County of San Bernardino
Council Member Dick Riddell, City of Yucaipa
Council Member John Roberts, City of Fontana
Mayor Pro Tem Sylvia Robles, City of Grand Terrace
Mayor Pro Tem Spagnolo, City of Rancho Cucamonga
Council Member Alan Wapner, City of Ontario

OmniTrans Administrative Staff Present

P. Scott Graham, CEO/General Manager
Diane Caldera, Director of Operations
Jack Dooley, Director of Maintenance
Marge Ewing, Director of Human Resources/Safety & Security
Sam Gibbs, Director of Internal Audit
Jacob Harms, Director of Information Technology
Jennifer Sims, Director of Procurement
Don Walker, Director of Finance
Wendy Williams, Director of Marketing/Planning
Andres Ramirez, IPMO Program Manager
Nathan Churan, Director of Special Transit Services
Maurice Mansion, Treasury Manager
Don Stellar, Maintenance Supervisor
Vicki Dennett, Senior Executive Assistant to the CEO/General Manager

B. ANNOUNCEMENTS/PRESENTATIONS

The next Committee Meeting is scheduled Thursday, January 12, 2017, at 8:00 a.m.

C. COMMUNICATIONS FROM THE PUBLIC

There were no communications from the public.

D. POSSIBLE CONFLICT OF INTEREST ISSUES

There were no conflict of interest issues identified.

E. DISCUSSION ITEMS

1. Approve Administrative & Finance Committee Minutes – November 10, 2016

M/S (Wapner/Roberts) that approved the Committee Minutes of November 10, 2016. Member Eaton abstained. The motion was approved by Members present.

2. Adopt Proposed 2017 Committee Meeting Schedule

M/S (Wapner/Gilbreath) that adopted the proposed Administrative & Finance Committee Meeting Schedule for 2017. The proposed schedule is the same as the current 2016 schedule, which is 8:00 a.m., the second Thursday after the Omnitrans Board Meeting.

January 12, 2017
February 9, 2017
March 9, 2017
April 13, 2017
May 11, 2017
June 15, 2017
No Meeting*
August 10, 2017
September 14, 2017
October 12, 2017
November 9, 2017
December 14, 2017

* As there is no Board Meeting in August, no Committee Meeting will be held in July.

Motion was unanimous by Members present.

3. Recommend the Board of Directors Receive and File Construction Progress Report No. 53 through November 30, 2016 - sbX E Street Corridor BRT Project

IPMO Program Manager Andres Ramirez presented this item. He reported that the project budget remained at \$191.7 million with \$185.3 million expended up-to-date. The projected amount for the project at completion was \$188.6 million. He explained that the focus was on the following three areas:

- 1) Tenth to Highland work was completed. The punch list was created and the final change order was issued. The contract was expected to be closed out by the end of this year or beginning of next year.
- 2) PA system contract was issued and approximately 90% of the submittals have been reviewed. The PA system installation was scheduled to take place in early January.
- 3) The Vehicle Maintenance Facility work was currently underway.

Mr. Ramirez stated that with regards to the Federal Transit Administration (FTA) project close-out, the Board awarded the After Study Survey contract at the December meeting and a kick-off meeting was scheduled for next week. The work would begin in January and ready for final submittal to the FTA in April 2017. Lastly, there is zero lost time with 510,000 man hours completed.

This report was approved to move forward to the Board of Directors for receipt and file.

4. Receive and File Omnitrans' Director of Finance Report - Price of Compressed Natural Gas

Director of Finance Don Walker reported that the price of natural gas had increased from \$0.73 per gallon in November to \$0.79 in December. The \$0.06 increase equated to \$23,160 in cost over the month prior. He explained that the price of natural gas was expected to increase during the winter months due to much of the gas supply being used for heating. The average price per gallon for the first six months of this fiscal year was \$0.75 per gallon, \$0.45 in liquefaction and delivery cost, and \$0.06 in sales tax.

He explained that the pipeline fueling infrastructure was currently underway and would result in a savings of \$174,000 monthly or \$2.1 million annually. Fueling with the pipeline infrastructure was scheduled to begin in February 2017. He indicated that the transition to pipeline gas decreased the operating budget from \$4.4 million in FY16 to \$2.5 million for FY17. In addition, Omnitrans would be participating low carbon fuel standards credit program which was expected to generate \$800,000 of revenue annually. He stated that the item to award the contract would be presented at the January Board meeting for approval.

Member Robles arrived at 8:05 a.m.

This item was received and filed.

5. Approve Re-Evaluation of Office Administrator to Office Manager

Director of Human Resources/Safety & Security Marge Ewing presented this report and stated that the staff recommendation was that this committee approve and recommend that Board approve the reevaluation of the Office Administrator position to an Office Manager position. She stated that the Position Information Questionnaire (PIQ) was attached in the report and noted that the responsibilities of this position increased as described in the report.

Member Graham stated that the report did not mention the total cost and asked what the annual amount was. Ms. Ewing explained that the level changed from a level V to a level IV and there was approximately a \$10,000 - \$12,000 difference depending on the pay range. She explained that the range minimum was \$72,700 and the maximum was \$98,736. She offered to add the information in the Board memo.

Member Gilbreath asked if anyone currently on staff was being evaluated for this position. Ms. Ewing responded that this was a new position and would be posted and opened up for a competitive process.

Member Hagman arrived at 8:10 a.m. prior to the vote.

M/S (Gilbreath/Davis) that recommended the Board of Directors approve the re-evaluation of Office Administrator from Level V to Level IV with the new title of Office Manager for the Special Transit Services Department, effective January 2, 2017.

F. ADJOURNMENT

The Administrative and Finance Committee meeting adjourned at 8:10 a.m.

The next Administrative and Finance Committee Meeting is scheduled Thursday, January 12, 2017, at 8:00 a.m., with location posted on the Omnitrans website and at Omnitrans' San Bernardino Metro Facility.

Prepared by:

Araceli Barajas, Executive Staff Assistant

DATE: September 21, 2016
TO: Valley Transportation Services Board of Directors
FROM: P. Scott Graham, CEO
RE: Minutes of the September 21, 2016 Board Meeting

MINUTES

1. Call to Order -- meeting called to order at 10:00 a.m. by Board Chairman Sam Spagnolo.
2. Pledge of Allegiance
3. Roll Call

Directors Present

Jacquelin Amsler
John Roberts
Sam Spagnolo
Alan Wapner

Directors Absent

Ed Graham
Penny Lilburn

Legal Counsel

Jennifer Gore, via Teleconference

Others Present

P. Scott Graham -- Omnitrans
Don Walker -- Omnitrans
Vicki Dennett -- Omnitrans
Kimberly Perez -- Omnitrans
Cindy Alvarado - Omnitrans

Public Comment for Items not on the Agenda

None.

4. Comments by Board Members

None.

5. Consent Calendar

- a. Approve Minutes**Page 2

Motion by Director Roberts, seconded by Director Wapner, that approved the June 15, 2016 minutes. Unanimously approved.

- b. Receive and file Financial Statements through June 30, 2016**Page 5

This item was received and filed.

6. CEO Report

- a. Receive update

- Scott Graham reviewed the update report to Board members, touching on the transitional progress of VTrans to Omnitrans. Notably, the Upland office lease settlement agreement was finalized and the matter closed, and the amended VTrans budget is scheduled to go to the Board for approval in December.

7. Discussion Items

- a. Revise 2016 Meeting Calendar**Page 25

Motion by Director Wapner, seconded by Director Roberts, that revised the 2016 Meeting Calendar and cancelled the Finance Committee meeting scheduled November 16, 2016, and the Board of Directors meetings scheduled October 19, 2016, and November 16, 2016. Unanimously approved.

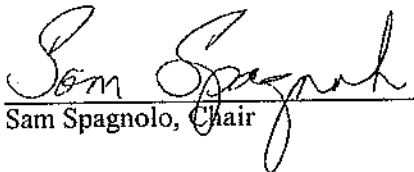
- b. Approve Assignment of Maintenance Facility Lease to Omnitrans**Page 26

Not many of the partner agencies utilize the Maintenance Facility; Omnitrans is currently monitoring to determine the extent of use, as compared with liability. The CNG vehicles will go to the I Street facility.

Motion by Director Wapner, seconded by Director Roberts, that authorized the CEO, with the assistance of legal counsel, to execute an agreement to assign the lease to Omnitrans, if approved in writing by the lessor. Unanimously approved.

8. Adjourn – Meeting adjourned at 10:20 a.m.

Approved on December 21, 2016


Sam Spagnolo, Chair


Jacquelin Ansler, Secretary of the Board

ITEM # E5

DATE: March 1, 2017

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Andres Ramirez, Program Manager

**SUBJECT: CONSTRUCTION PROGRESS REPORT NO. 55 THROUGH
JANUARY 31, 2017 – sbX E STREET CORRIDOR BRT PROJECT**

FORM MOTION

Receive and file Construction Progress Report No. 55 for the sbX E Street Corridor BRT Project through January 31, 2017.

This item was reviewed by the Administrative and Finance Committee at its February 9, 2017, meeting, and recommended for receipt and file.

BACKGROUND

This is Construction Progress Report No. 55 for the sbX E Street Corridor Project.

CONCLUSION

Receive and file Construction Progress Report No. 55 for the sbX E Street Corridor BRT Project through January 31, 2017.

PSG:AR

Attachment

**sbX E Street Corridor
Bus Rapid Transit (BRT) Project
Construction Progress Report No. 55**

January 31, 2017

Prepared By:

**Omnitrans
Integrated Project Management Office**

Contractor: SBX Corridor - Griffith/Comet Joint Venture
PA System – Ford Audio Visual
VMF – USS Cal Builders
10th to Highland – Matich Corporation
VMF Modification – Regency Pacific

Contractor Contract No.: IPMO11-5

Omnitrans Program Manager: Andres Ramirez

TABLE OF CONTENTS

- I. Project Status Summary
 - A. Project Description
 - B. Summary Status Update
- II. Project Schedule
- III. Safety
- IV. Project Budget and Cost

I. PROJECT STATUS SUMMARY

A. Project Description

The sbX E Street Corridor BRT Project is an Omnitrans transit improvement project that consists of three components.

E Street Corridor: A 15.7-mile-long Bus Rapid Transit corridor that will connect the northern portion of the City of San Bernardino with the City of Loma Linda. The sbX E Street Corridor Bus Rapid Transit (BRT) Project has evolved as the highest priority corridor identified in the System-Wide Transit Corridor Plan for the San Bernardino Valley.

Bus Purchase: In order to provide service to the E Street Corridor a total of fourteen 60' articulated buses will be purchased.

Vehicle Maintenance Facility Modifications: A 4.4-acre facility maintaining and servicing the Omnitrans' bus fleet, comprised of over 160 buses. Modifications to Omnitrans' facility include the demolition of a bus washing station, removal of abandoned underground fuel tanks and new construction of a bus washing system, a new Genset, a three-lane CNG fueling station, and re-configuring the bus parking area. Modifications to the maintenance building are made in order to accommodate Omnitrans' 60-foot articulated bus fleet.

B. Summary Status Update

E Street Corridor:

10th to Highland:

- Street re-opened on 9/8/16 as planned
- Contract Close Out continues.

PA System:

- Material received.
- Mobilization in January 2017.
- Installation of wire and speakers at Loma Linda Park and Ride started.
- Projected completion June 28, 2017

Vehicle Maintenance Facility:

Contract Closeout

- Final Change Order and Final Acceptance need to be issued

Modification Work

- Electrical, concrete, and low voltage work continues.
- Fuel Island extensions started.
- Card Access additions continue.
- Vacuum System installation in progress.
- Completion projected for April 2017.

Project Closeout with FTA:

Project Closeout

- Funds transfer for FTA reimbursement complete.
- After-study surveys started.

II. PROJECT SCHEDULE

The three major components of the project (E Street Corridor, 60' Articulated Buses, and the Vehicle Maintenance) are complete and have been placed into operation. Additional components to the project (i.e. 10th to Highland, City Acceptance Work, the PA System, and the VMF Completion Work) are currently being worked on and are in different stages of progress. Projected completion dates listed below:

	Scheduled Completion	Projected Completion
E Street Corridor		
City of SB Final Work / World Oil	February 2016	Completed
10 th to Highland	September 2016	Completed
PA System	November 2016	June 2017
Vehicle Maintenance Facility		
Modification Work	May 2016	April 2017
Project Closeout with FTA		
After-Study	April 2017	April 2017

III. SAFETY

The project team considers safety to be the utmost priority. As such, the entire project team works towards a “no-lost time” goal on a daily basis. Below is a breakdown of the hours achieved with zero lost time due to injuries:

	Through December 2016
E Street Corridor	
Corridor Construction including final Work	425,441
10 th to Highland	19,893
PA System	480
Vehicle Maintenance Facility	64,786
Total	510,570

IV. PROJECT BUDGET AND COST

The project continues to be within budget. We currently have zero open claims on the project. A breakdown of the project costs and projections is detailed in the following tables:

Total Project Budget Summary
Budget as of December 31, 2016

Approved Budget	\$191,706,000
Cost to Date	\$185,890,761
Estimate to Complete	
Corridor Project	\$ 2,085,024
10 th to Highland	\$ 324,645
Estimate at Completion	\$188,300,431

Budget By Contract Packages 31-Dec-2016								(Contract Award + Approved Changes)		(Approved Current Budget- Committed)	Forecast		
											Potential Uses of Contingency		
	PCGA Budget	Approved Current Budget	Authorized for Expenditure	Expended to Date	% of Approved Current Budget	Contracts Awarded	Approved Changes	Committed	Expenditure Authorization Remaining	Remaining Contingency	Pending Commitments/ Potential Changes	Trends/Risks	Estimate At Completion
BRT Construction													
Griffith/Comet JV	90,780,000	84,637,000	87,760,263	81,238,395	96.2%	64,937,853	16,365,742	81,303,595	6,456,668	3,333,405	-	-	81,303,595
Art			68,000	68,000		68,000	-	68,000	-	(68,000)	-	-	68,000
Other Direct Payments			48,401	57,197		57,197	-	57,197	(8,796)	(57,197)	-	-	57,197
Delineators				70,991		89,943	(18,952)	70,991	(70,991)	(70,991)	-	-	70,991
PA System				24,820		563,875	-	563,875	(563,875)	(563,875)	56,388	-	620,263
Miscellaneous Work				-		17,500	-	17,500	(17,500)	(17,500)	75,000	75,000	167,500
BRT Design													
Parsons	19,193,400	17,849,400	18,097,876	19,134,095	107.6%	16,464,092	3,725,637	20,189,729	(2,091,853)	(2,340,329)	(1,334,545)	-	18,855,185
PA System				71,300		83,000	-	83,000	(83,000)	(83,000)	8,300	-	91,300
Miscellaneous Work				-		-	-	-	-	-	-	-	-
VMF Construction													
USS Cal Builders	5,370,000	8,131,000	14,498,152	14,539,965	179.8%	10,579,786	3,955,349	14,535,135	(36,983)	(6,404,135)	100,000	-	14,635,135
Regency Pacific				76,827		697,000	-	697,000	(697,000)	(697,000)	69,700	-	766,700
VMF Design													
STV	1,007,600	1,007,600	1,418,132	1,907,074	191.1%	951,029	1,048,727	1,999,756	(581,624)	(992,156)	-	-	1,999,756
Carlin Environmental			27,800	18,380		10,000	9,800	19,800	8,000	(19,800)	-	-	19,800
Vehicles Design & Manufacturing-N.F.	16,628,000	16,628,000	15,978,093	15,211,154	92.5%	15,483,572	(272,418)	15,211,154	766,939	1,416,846	-	-	15,211,154
Other Vehicle Equipment			318,853	173,484		318,853	(145,369)	173,484	145,369	(173,484)	-	-	173,484
ROW Acquisition Services-SANBAG	6,532,000	10,357,000	11,738,400	11,418,850	110.3%	10,971,135	447,715	11,418,850	319,550	(1,061,850)	-	-	11,418,850
3rd Party Utilities Design & Reloc.		1,003,000	1,157,223	1,106,705	110.3%	1,174,205	-	1,174,205	(16,982)	(171,205)	50,000	-	1,224,205
Project Admin. And Management													
Jacobs	6,638,000	6,632,000	11,852,647	12,969,303	195.6%	3,898,769	9,070,534	12,969,303	(1,116,656)	(6,337,303)	-	-	12,969,303
Other													
IPMO	17,624,000	15,012,450	14,722,701	14,859,900	99.0%	15,006,001	-	15,006,001	(283,300)	6,449	-	-	15,006,001
Insurance	1,113,000	1,112,000	500,000	-	0.0%	500,000	(500,000)	-	500,000	1,112,000	-	-	-
Legal-BB&K, County	2,525,450	1,000,000	1,000,000	374,686	37.5%	1,000,000	(527,136)	472,864	527,136	527,136	-	-	472,864
In Kind Contributions	8,080,550	8,080,550	8,080,550	8,401,239	104.0%	8,401,239	-	8,401,239	(320,689)	(320,689)	-	-	8,401,239
Survey	1,464,000	1,463,000	464,000	-	0.0%	25,000	(25,000)	-	464,000	1,463,000	-	-	-
Start-Up	720,000	720,000	700,000	-	0.0%	264,866	-	264,866	435,134	455,134	10,000	-	274,866
Sub-Total	177,676,000	173,633,000	188,431,091	181,722,362	104.7%	151,562,915	33,134,628	184,697,543	3,733,548	(11,064,543)	(965,157)	75,000	183,807,386
Unallocated Contingency	14,030,000	18,073,000	4,623,705					11,064,543		7,008,457			7,898,614
10th to Highland Projected Costs			4,484,121	4,168,399	93.0%	4,323,540	160,581	4,484,121	-	(4,484,121)	8,924	-	4,493,045
Remaining Unallocated Contingency													3,405,569
Total	191,706,000	191,706,000	188,291,506	185,890,761	97.0%								191,706,000

IPMO/sbX Project Cost Report											
Period Ended 31-Dec-2016											
Description	Current Budget	Approved Current Budget	Authorized for Expenditure	Expenditures \$	%	Remaining Budget	Committed %	Estimate to Complete	Estimate at Completion	Budget Forecast Variance	
BRT Construction	\$ 84,637,000	\$ 84,637,000	\$ 87,876,664	\$ 81,459,402	96.2%	3,177,598	\$ 82,081,158 97.0%	\$ 206,388	\$ 82,287,545	\$ 2,349,455	
Vehicle Maintenance Facility (VMF) Construction	\$ 8,131,000	\$ 8,131,000	\$ 14,498,152	\$ 14,616,791	179.8%	(6,485,791)	\$ 15,232,135 187.3%	\$ 169,700	\$ 15,401,835	\$ (7,270,835)	
Vehicles - Design & Manufacturing	\$ 16,628,000	\$ 16,628,000	\$ 16,296,946	\$ 15,384,638	92.5%	1,243,362	\$ 15,384,638 92.5%	\$ -	\$ 15,384,638	\$ 1,243,362	
ROW Acquisition Services	\$ 10,357,000	\$ 10,357,000	\$ 11,738,400	\$ 11,418,850	110.3%	(1,061,850)	\$ 11,418,850 110.3%	\$ -	\$ 11,418,850	\$ (1,061,850)	
3rd Party Utilities Design & Relocation	\$ 1,003,000	\$ 1,003,000	\$ 1,157,223	\$ 1,106,705	110.3%	(103,705)	\$ 1,174,205 117.1%	\$ 50,000	\$ 1,224,205	\$ (221,205)	
BRT Design	\$ 17,849,400	\$ 17,849,400	\$ 18,097,876	\$ 19,205,395	107.6%	(1,355,995)	\$ 20,272,729 113.6%	\$ (1,326,245)	\$ 18,946,485	\$ (1,097,085)	
VMF Design	\$ 1,007,600	\$ 1,007,600	\$ 1,445,932	\$ 1,925,454	191.1%	(917,854)	\$ 2,019,556 200.4%	\$ -	\$ 2,019,556	\$ (1,011,956)	
Other Professional, Technical & Management Services	\$ 34,020,000	\$ 34,020,000	\$ 37,319,898	\$ 36,605,127	107.6%	(2,585,127)	\$ 37,114,273 109.1%	\$ 10,000	\$ 37,124,273	\$ (3,104,273)	
Allocated Contingency (Construction Contract)	\$ -	\$ -	\$ -			-	\$ - 0.0%	\$ -	\$ -	\$ -	
SUB-TOTAL	\$ 173,633,000	\$ 173,633,000	\$ 188,431,091	\$ 181,722,362	104.7%	(8,089,362)	\$ 184,697,543 106.4%	(890,157)	183,807,386	(10,174,386)	
Unallocated Contingency	\$ 18,073,000	\$ 18,073,000	\$ 4,623,705	\$ -		18,073,000	\$ - 0.0%	\$ -	\$ -	\$ 18,073,000	
10th to Highland	\$ -	\$ 4,493,045	\$ 4,484,121	\$ 4,168,399	92.8%	324,645	\$ 4,323,540 96.2%	\$ 324,645	\$ 4,493,045	\$ -	
TOTAL	\$ 191,706,000	\$ 191,706,000	\$ 188,291,506	\$ 185,890,761	97.0%	\$ 10,308,284	\$ 189,021,083 98.6%	\$ (565,512)	\$ 188,300,431	\$ 7,898,614	

ITEM # _____ E6

DATE: March 1, 2017

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Donald Walker, Director of Finance

SUBJECT: OMNITRANS' FISCAL YEAR ENDED JUNE 30, 2016 AUDIT REPORTS

FORM MOTION

Receive and file Omnitrans financial audit reports for fiscal year ended June 30, 2016.

This item was reviewed by the Administrative and Finance Committee at its February 9, 2017, meeting and recommended to the Board of Directors for receipt and file.

BACKGROUND

The financial audit includes the following reports (see separate attachments):

- Statement of Auditing Standards Letter (SAS 114), and Management Letter
- Agreed-Upon Procedures Performed With Respect to the National Transit Database (NTD) Report
 1. Independent Accountants' Report on Applying Agreed-Upon Procedures
- Single Audit Report on Federal Awards
 1. Independent Auditors' Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance With Government Auditing Standards, The Transportation Development Act and California Government Code §8879.50
 2. Independent Auditors' Report on Compliance for Each Major Program; Report on Internal Control Over Compliance; and Report on the Schedule of Expenditures of Federal Awards Required by OMB Circular A-133
- Independent Auditors' Report on Proposition 1B
 1. Independent Auditors' Report on Proposition 1B Schedule of Unspent Funds and Cash Disbursements

- Comprehensive Annual Financial Report

As a recipient of federal, state, and local funding, Omnitrans is required to have an annual audit conducted by independent auditors in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States. The audit also included fifteen tasks contained in San Bernardino Associated Governments (SANBAG) Transportation Development Act 2005 Compliance Guide.

- The SAS 114 letter establishes standards and provides guidance on the auditor's communication with those charged with governance in relation to an audit of financial statements. The standards and guidance applies regardless of an entity's governance structure or size. Particular considerations apply where all of those charged with governance are involved in managing an entity. *Those charged with governance* means the person(s) with responsibility for overseeing the strategic direction of the entity and obligations related to the accountability of the entity. This includes overseeing the financial reporting process. For entities with a board of directors, this term encompasses the term *board of directors* or *audit committee* used elsewhere in generally accepted auditing standards.
- The NTD was established by Congress to be the Nation's primary source for information and statistics on the transit systems of the United States. Recipients or beneficiaries of grants from the Federal Transit Administration (FTA) under the Urbanized Area Formula Program (§5307) or Other than Urbanized Area (Rural) Formula Program (§5311) are required by statute to submit data to the NTD.
- Each year, the Federal Government provides over \$400 billion in grants to State, local and tribal governments, colleges, universities and other non-profit organizations (non-Federal entities). The Single Audit Act of 1984 and OMB Circular A-133 provide audit requirements for ensuring that these funds are expended properly.
- The TDA requirement is mandated by California Code of Regulations, Title 21, sections 6661 and 6751. Local Transportation Fund and State Transit Assistance Fund recipients must submit a fiscal audit report to the State Controller's Office annually and within 180 days after the end of the fiscal year. The audit report shall be conducted in accordance with generally accepted auditing standards and include a compliance certification with the TDA.
- The Public Transportation Modernization, Improvement, and Service Enhancement Account Program (PTMISEA) was created by Proposition 1B, the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006. Of the \$19.9 billion available to Transportation, \$3.6 billion dollars was allocated to PTMISEA to be available to transit operators over a ten-year period. PTMISEA funds may be used for transit rehabilitation, safety or modernization improvements, capital service enhancements or expansions, new capital projects, bus rapid transit improvements, or rolling stock (buses and rail cars) procurement, rehabilitation or replacement.

- The financial statements for fiscal year ended June 30, 2016 are presented in the Comprehensive Annual Financial Report (CAFR) along with comparative financial information for the year ended June 30, 2015. The audit expresses a professional opinion as to whether the financial statement prepared by management with the Board of Directors' oversight are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles. Since fiscal year 2005, Omnitrans has received an "unqualified" or "unmodified" opinion on its financial statements.

A Comprehensive Annual Financial Report for FY2016 will be submitted to the Government Finance Officers Association (GFOA) for a Certificate of Achievement for Excellence in Financial Reporting. The Certificate of Achievement is the highest form of recognition in governmental accounting and financial reporting, and its attainment represents a significant accomplishment by an Agency and its management. Omnitrans was awarded a Certificate of Achievement for it FY1998, FY1999, FY2000, FY2006, FY2007, FY2008, FY2009, FY2010, FY2011, FY2012, FY2013, FY2014 and FY2015 CAFRs.

CONCLUSION

Receive and file Omnitrans financial reports for fiscal year ended June 30, 2016.

PSG:DW

Separate Attachments:

Statement of Auditing Standards Letter (SAS 114), and Management Letter
Agreed-Upon Procedures Performed With Respect to National Transit Database (NTD) Report
Single Audit Report on Federal Awards
Independent Auditors' Report on Proposition 1B
Comprehensive Annual Financial Report

ITEM # E7

DATE: March 1, 2017

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE AWARD – CONTRACT FIN17-61
CREDIT/DEBIT CARD PROCESSING AND MERCHANT SERVICES**

FORM MOTION

Authorize the CEO/General Manager to award Contract FIN17-61 to Fidelity Information Services, LLC (FIS), of Jacksonville, FL, for the provision of Credit/Debit Card Processing and Merchant Services for a three (3) year base period, with the authority to exercise two (2) single option years ending no later than February 28, 2022, in the amount of \$67,200, plus a ten percent contingency of \$6,720, for a total not-to-exceed amount of \$73,920, should all options be exercised.

BACKGROUND

Omnitrans' sbX Green Line is a 15.7 mile Bus Rapid Transit (BRT) corridor that spans between northern San Bernardino and Loma Linda. The Green Line features bus stations with twenty-six (26) Ticket Vending Machines (TVMs). The TVMs provide credit/debit card payment options for customers using credit/debit Visa, MasterCard, American Express or Discover. The TVMs do not accept cash.

On December 12, 2016, staff released Request for Quotes RFQ-FIN17-61 for Credit/Debit Card Processing and Merchant Services. The RFQ was posted on Omnitrans' online bidding system. Firms were asked to provide itemized fees for Visa, MasterCard, Discover, and American Express transactions. One (1) bid was received by the January 24, 2017 deadline from FIS, Omnitrans' current vendor.

In accordance with FTA Circular 4220.1F, and Omnitrans Procurement Procedure 4050.1, Section 5, awarding a contract in response to a single proposal is allowed when it can be determined that the lack of competition was not due to unfavorable terms and conditions or unduly restrictive scopes of work or technical specifications. Staff contacted firms that were notified of the solicitation, but chose not to submit proposals. As a result of the survey, staff

determined that the limited number of responses was unrelated to any term or specification and deemed the process valid.

Listed below is the bid price:

	Annual Estimate	5-year Estimate
FIS	\$ 13,440	\$ 67,200

Additional fees assessed by Visa, MasterCard, American Express, and Discover will be included as a pass-through on FIS's invoice, bringing the total not-to-exceed amount to \$67,200.

The five (5) year Independent Cost Estimate of \$67,200 was based on projected revenue using the historical contract rates. A cost analysis was performed to determine the reasonableness of FIS's pricing. FIS held their 2014 rate of \$0.25 per transaction, which is \$0.05 more than the per transaction rate charged to Hampton Transit of Norfolk, VA. Due to Hampton Transit's annual transaction volume being five (5) times higher than Omnitrans' volume, the pricing was deemed fair and reasonable.

This procurement meets the requirements of Omnitrans' Procurement Policies and Procedures.

FUNDING SOURCE

The cost associated with this procurement is budgeted in the Marketing-Planning Department's Operating Budget as follows:

Department 1400
Expenditure Code 503060

_____ Verification of Funding Sources and Availability of Funds.
(Verified and initialed by Finance)

Short Range Transit Plan/Strategic Initiative Supported – N/A

CONCLUSION

By proceeding with this award, Omnitrans' TVMs will continue to provide credit/debit card payment options for customers.

PSG:JMS:KT



ORDER FORM

Prepared for: OmniTrans
1700 W. Fifth Street
San Bernardino, CA 92411
Order Form Reference: 00102099.0
Master Agreement: 00102098.0
Order Form Effective Date: 2/18/2017

Fidelity Information Services, LLC
601 Riverside Avenue
Jacksonville, FL 32204-2946

SOLUTIONS & TERM

Solution	Applicable Addendum	Initial Term	Renewal Term
PayDirect	The existing PayDirect Services Agreement applies to this product.	36 Months	12 Months

Each Service on this Order Form will begin on the Commencement Date for that Service, which shall be the Order Form Effective Date if the Service is already in effect as of the Effective Date, and will continue for the initial term in the table above (the "Initial Term"). After the Initial Term, the term of the Service automatically renews for up to 2 successive renewal terms as set forth in the table above (each, a "Renewal Term") unless terminated by Client or FIS in writing at least 180 days prior to the last day of the then-current Initial Term or Renewal Term, and will not in any event continue for more than 60 months from the Order Form Effective Date without the written agreement of Client and FIS.

This Order Form is governed by the PayDirect Services Agreement between **OmniTrans** and **Fidelity Information Services, LLC** dated 2/5/2014. In the event of any conflict between this Order Form and the Agreement, the terms of this Order Form govern the Software or Services on this Order Form. By signing this Order Form, Client agrees to purchase the Services and license the Software listed on the attached pricing attachment(s) at the prices listed.

OMNITRANS

Signature: _____

Name: P. Scott Graham

Title: CEO/General Manager

Date: _____

FIDELITY INFORMATION SERVICES, LLC

Signature: _____

Name: _____

Title: _____

Date: _____



PAYDIRECT SERVICES AGREEMENT

This PayDirect Services Agreement ("Agreement") is effective as of February 5, 2014 ("Effective Date") and is by and between FIDELITY INFORMATION SERVICES, LLC, an Arkansas limited liability company located at 601 Riverside Avenue, Jacksonville, Florida 32204 (together with its subsidiaries and affiliates, "FIS"), and OMNITRANS, a joint powers authority organized under Sections 6500 et seq. of the California Government Code and Section 130255 of the California Public Utilities Code with power to contract for services as described in this Agreement, located at 1700 West Fifth Street, San Bernardino, California 924111 ("Client").

1. **Schedules and Exhibits.** All schedules and exhibits attached hereto are incorporated herein and deemed part of this Agreement. As of the Effective Date, the parties acknowledge that this Agreement includes the following Schedule:

Products and Services Schedule (Gateway – Agency Funded Interchange Pass-through)


2. **Term.** The Agreement shall remain in effect until the date on which FIS is no longer obligated to provide any Service. Each Service, unless otherwise provided for elsewhere in the Agreement, shall have an initial term of thirty-six (36) months following the Commencement Date (as defined below) thereof (the "Initial Term").

3. **Non-Appropriation Clause.** The duration of the Initial Term shall not apply to this Agreement should Client fail to appropriate funds for any fiscal year. Client's fiscal year runs from January 1 through December 31. Client shall use all reasonable efforts to notify FIS by December 1 if funding has not been approved for the next fiscal year. If this non-appropriation occurs, the Agreement shall be terminated except that FIS shall be entitled to collect funds for all fiscal years for which funds have been appropriated and for all Services provided. Furthermore, Client shall either purchase or return any Equipment provided by FIS in accordance with the provisions set forth in the Biller Solutions Services Addendum.

4. **Additional Services.** Additional Services or Software may be added from time to time by amending this Agreement, in accordance with its terms.

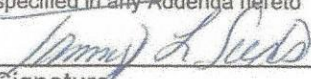
IN WITNESS WHEREOF, the parties have caused their duly authorized officers or representatives to execute and deliver this Agreement as a legally binding obligation of such party.

OMNITRANS


 Signature
 P.S. GRAHAM
 Name (printed)
 CEO/COO OMNITRANS
 Title
 2/19/14
 Date Signed

FIDELITY INFORMATION SERVICES, LLC

On behalf of itself and the subsidiaries and affiliates specified in any Addenda hereto


 Signature
 Tammy L Seeds
 Name (printed)
 Controller, Sales Finance
 Title
 2-7-14
 Date Signed

FIS Payment Account Number

Transit and Routing Number of FIS Payment Account

012414JL



PLID 228950 / TransPayDirect / JL

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1. **Introduction.** This PayDirect Services Agreement dated as of the Effective Date (as set forth on the signature page) describes the Services to be provided to Client. Client engages FIS to provide one or more of the following: API, online, point-of-sale, and/or telephonic payment processing services ("Services") using FIS's software and systems ("System") as described in this Agreement for Client's credit card, debit card, electronic benefits transfer and/or electronic check transactions ("Transactions") throughout the Initial Term and any Renewal Terms. FIS will provide the Services to Client either directly or through one or more of its affiliated companies or subcontractors, in accordance with the corresponding Specifications. References to FIS in this Agreement include such entities.

2. **Commencement.**

2.1 The Commencement Date of a Service already in effect as of the Effective Date shall be the Effective Date. Unless otherwise set forth, the "Commencement Date" of a Service not in effect as of the Effective Date is the earlier of: (i) the date the Services are first installed and available for Client's use in production; (ii) Client's first production use of the Services; or (iii) the commencement date agreed upon by the parties in writing. In the event that the parties are unable after a reasonable period of time to reach mutual agreement upon a Commencement Date, the Commencement Date shall be deemed to be the three (3)-month anniversary of the Effective Date. If commencement of a Service is delayed for more than ninety (90) days after the agreed upon Commencement Date and such delay is not due to FIS's failure to meet its obligations hereunder, FIS may suspend delivery of the Services and Client shall pay any one-time fees and minimum fees through the balance of the Initial Term. Upon the request of either party, the Commencement Date may be rescheduled to a new date that is mutually agreed upon in writing by both parties.

2.2 Each party shall dedicate sufficient resources, including the assignment of adequate personnel, to commence the Services as soon as practical following the Effective Date.

2.3 FIS may postpone implementation of the Services if Client fails to timely provide required information or a circumstance arises that might jeopardize timely processing of transactions for other clients of FIS.

3. **Responsibilities.**

3.1 **FIS Responsibilities.**

3.1.2 If Client pays all applicable fees when due, FIS shall provide (i) Client and Client's customers ("Customers") with access to and use of the Services in accordance with this Agreement, the applicable Schedules, and FIS's then current standard user operating instructions and requirements made available to Client from time to time ("Specifications"), and (ii) Client with standard reporting, if any, associated with use of the Services. FIS shall perform the Services in compliance with all Laws applicable to FIS as a provider of that Service. "Law" means any law, rule, regulation, ordinance, code or order to which a party may be subject or under which a party may exercise rights.

3.1.3 FIS shall perform an on-going review of federal Laws applicable to the provision of the Services and any software. FIS shall maintain the features and functions for the Services and software in accordance with all federal Laws applicable to such features and functions, including new or amended federal Laws (as applicable and necessary to support compliance obligations), in a non-custom environment. In addition, FIS shall work with Client in developing and implementing a suitable and commercially reasonable procedure or direction to enable Client to comply with state and local Laws applicable to the Services and software being provided to Client, and, to the extent commercially possible, modify the manner in which FIS provides the Services prior to the regulatory deadline for such compliance. Any modification in the Services or software necessitated by such a change in state or local Laws shall be paid for by Client.

3.2 **Client Responsibilities.**

3.2.1 Client shall: (i) provide Customer information to FIS in accordance with the Specifications; (ii) except to the extent due to FIS's material breach of this Agreement, assume all risk and liability associated with transactions, including any risk of counterfeit, charged-back or fraudulent transactions; (iii) use the Services in accordance with the Specifications; (iv) timely deliver any Data (defined below) or other information necessary for the provision of the Services in an electronic form and format approved by FIS; (v) be solely responsible for timely procuring any information or cooperation required from its Customers and suppliers or other third party(ies) in order to commence the Services; (vi) have sole responsibility for verifying the accuracy, completeness or authenticity of any Data furnished by Client or a third party; (vii) be solely responsible for training its employees and representatives to comply with all Laws applicable to Client and the procedures set forth in the Specifications or any manual or other literature provided to Client by FIS; (viii) comply with all Laws applicable to Client's business and its use of the Services, including but not limited to those Laws relating to usury, truth-in-lending, fair credit reporting, equal credit opportunity, automated clearing house transfers, networks



associations, electronic funds transfer, privacy and direct marketing, regardless of whether Client uses any forms or other Materials supplied by FIS; and (ix) be responsible for providing FIS with notice of any changes in state or local Law that impact Client's use of the Services.

3.2.2 Client shall be responsible for monitoring and interpreting (and for complying with, to the extent such compliance requires no action by FIS), the applicable Laws pertaining to Client's business ("Legal Requirements"). Based on Client's instructions, FIS shall implement the processing parameter settings, features and options (collectively, the "Parameters") within FIS's Services and Systems that shall apply to Client, subject to the change request process in place between FIS and Client to establish requirements, development arrangements and deployment timelines. Client shall be responsible for determining that such selections are consistent with the Legal Requirements and with the terms and conditions of any agreements between Client and its Customers. In making such determinations, Client may rely upon the written descriptions of such Parameters contained in the Specifications. FIS shall perform the Services in accordance with the Parameters.

3.3 Data.

3.3.1 Client shall be solely responsible for the transmission, at Client's expense, of any information, data, records or documents (collectively, "Data") necessary for FIS to perform the Services, and shall bear any risk of loss resulting from that transmission until FIS confirms receipt. FIS shall bear the risk of loss resulting from Data transmitted to Client until Client confirms receipt. If Client directs FIS to disclose Data to a third party, Client shall provide FIS with written authorization to do so and bear any risk of loss or liability associated with that disclosure. In addition, FIS shall be held harmless from any claim resulting from the third party's use of that Data, and may, in its discretion, require the third party to enter into a written agreement with FIS governing disclosure of that Data.

3.3.2 FIS shall not be responsible for the accuracy, completeness or authenticity of any Data furnished by Client or a third party, and shall have no obligation to audit, check or verify that Data. If any Data submitted by Client or a third party to FIS is incorrect, incomplete or not in the required format, FIS may require Client to resubmit the Data or FIS may correct the Data and bill Client its then-current rates for performing those corrections. FIS shall attempt to notify Client prior to Client incurring such expense.

3.3.3 Client shall maintain a copy of all Data submitted to FIS (whether directly or through a third party) to permit reconstruction if ever required. Client assumes all risk and expense associated with Data reconstruction, except for those expenses incurred as a direct consequence of FIS's breach of this Agreement. If Data reconstruction is ever required, the parties shall mutually agree on a schedule for that reconstruction.

3.4 Disaster Recovery. In accordance with FFIEC business continuity guidelines, FIS has put in place a disaster recovery plan designed to minimize the risks associated with a disaster affecting FIS's ability to provide the Services under this Agreement. FIS's recovery time objective (RTO) under such plan is as set forth in the continuity program summary document made available to Client. FIS will maintain adequate backup procedures in order to recover Client's Data to the point of the last available good backup, with a recovery point objective (RPO) as set forth in the continuity program summary document made available to Client. FIS will test its disaster recovery plan annually. Upon request, FIS will provide a summary of its disaster recovery plan and test results, excluding any proprietary information or NPI. Client authorizes FIS to provide Client's Data to external suppliers in order to test and prepare for disaster recovery, as well as provide replacement services in the event of a disaster. Client is responsible for adopting a disaster recovery plan relating to disasters affecting Client's facilities and for securing business interruption insurance or other insurance necessary for Client's protection.

3.5 Changes to Services. FIS may change any features, functions, brand, third party provider, attributes of the Services, or any element of its systems or processes, from time to time, provided that such changes do not have a material adverse impact on the performance or cost of the Services. Client shall not rely on identification of specific brands associated with or names of third party providers of a service as an obligation of FIS to use any particular brand or third party provider. If Client requests a change to the Services, the parties shall negotiate the terms for such change, which terms will be set forth in a mutually agreed upon statement of work ("SOW").

3.6 Transition Assistance. Upon termination of this Agreement, FIS shall cooperate in the transition of the Services to Client or a replacement service provider and, if requested by Client, perform ancillary services for additional fees. However, no master files, transaction data, test data, record layouts or other similar information shall be provided by FIS until: (i) Client and, if applicable, the replacement service provider, have executed FIS's deconversion confidentiality agreement; (ii) Client has fully paid all outstanding amounts; (iii) Client has completely prepaid FIS's fees for deconversion assistance; and (iv) the parties mutually agree on a date for deconversion that is at least one hundred eighty (180) days following FIS's receipt of Client's notice of deconversion. If the one hundred eighty (180)-day period



ends between the third week of November and the third week of January, the time period for completing deconversion may be extended until the first week of February. In addition, upon termination of this Agreement, FIS may, at Client's request and expense, continue to provide the corresponding Services(s) until the deconversion is completed, provided the parties agree to such continuation in writing.

3.7 Problem Reporting and Resolution. Client shall timely report any problems encountered with the Services. FIS shall provide a toll-free telephone number for problem reporting. FIS shall promptly respond to each reported problem based on its severity, the impact on Client's operations and the effect on the Services. FIS shall use reasonable commercial efforts to either resolve each problem or provide Client with information to enable Client's personnel to resolve it.

4. Services.

4.1 Payment Processing. FIS shall transmit Transaction files for authorization and settlement through FIS's certified payment processor(s) (an "Approved Processor"). Funds for Transactions processed by FIS hereunder shall be submitted to Client's designated bank account as follows: (i) no more than two (2) business banking days after all Transactions (other than electronic check transactions) that are successfully processed; and (ii) no more than five (5) business banking days for all electronic check transactions that are successfully processed prior to 5:00 p.m. ET on each business banking day. FIS makes no representation or warranty as to when funds will be made available by Client's bank.

4.2 Support. FIS shall provide Client with level three Client service support, twenty-four (24) hours per day, seven (7) days per week, subject to commercially reasonable downtime, with toll-free voice communications lines and representatives to address Client service requests.

4.3 Electronic Check Authorization. If Client has elected to accept electronic checks as a form of payment, the following subsections apply:

4.3.1 FIS may provide check authorization services to assist Client with its decision whether to accept a check, and shall process those check Transactions requested by Client, subject to the terms of this Agreement. Client shall select those risk management controls available from time to time for use with the Services and assumes sole responsibility for the controls it selects. FIS shall provide Client with all standard risk management reports associated with the Services and the risk management controls selected by Client.

4.3.2 FIS shall use reasonable efforts to provide Client with accurate and reliable information; however, FIS does not guarantee the accuracy or availability of that information. In addition, FIS may decline to authorize a check for reasons other than derogatory information relating to the check writer based on the risk management controls selected by Client referenced above. Accordingly, Client should exercise its own judgment in determining whether or not to (i) accept a check, and should not draw any adverse conclusions about the creditworthiness of a check writer if the check is not authorized and (ii) assess a service charge on a dishonored check. If Client elects to collect a service charge for a dishonored check, it must do so in compliance with all applicable Laws, including Regulation E and state Laws regarding service charges. FIS disclaims all liability and responsibility for Client's assessment of any service charges on dishonored checks. Client acknowledges that FIS will not provide collection services.

4.4 Convenience Fee Option. If Client elects to charge a convenience fee to Customers, the amount of such fee(s) shall be specified in the implementation Specifications. Client authorizes FIS to collect each convenience fee.

4.5 Transaction Errors. FIS's sole responsibility for any Transaction error or reversed Transaction is to determine whether any mechanical, procedural, or processing problems occurred at FIS during the preparation of the Transaction file (including but not limited to rejection of files) and, if necessary, reprocess and resubmit the Transaction file without additional charge. In the event that a Transaction is reversed or refunded to any Customer of Client, for any reason, FIS may offset such amount against funds remitted to Client, or invoice Client for such amount. Client shall pay any such invoice in accordance with this Agreement. In such instance, FIS shall notify Client of the Customer's name and account number.

4.6 Implementation/Professional Services. FIS shall perform the professional services for Client as set forth in the Pricing Attachment and the implementation plan and shall perform additional professional services as mutually agreed upon by the parties from time to time under this Agreement, provided that either party may require execution of a separate mutually acceptable professional services agreement prior to FIS's performance of professional services other than those set forth in the Pricing Attachment or the implementation plan.



5. **Optional Features.** Client may purchase optional features of the Services (the "Optional Feature") at any time. If FIS provides an Optional Feature, Client shall pay FIS the then-current fees. The Optional Feature shall be provided by FIS in accordance with this Agreement and the then-current version of the applicable Specifications. Once purchased, any Optional Features shall fall within the definition of the Services provided hereunder. If applicable to Optional Features, the following Domain Name and Client Brand Feature terms shall be applicable.

5.1 Domain Names; Client Brand Features.

5.1.1 Unless otherwise agreed by FIS and Client, FIS shall own all of the unique addresses that identify the location of a website(s) on the Internet ("Domain Name(s)") used to provide the UI Services, provided that Client shall own any and all Domain Names used for the Internet Private Label Site or Private Label Virtual Terminal. For purposes of this Agreement, "Internet Private Label Site" means a secure payment website on the Internet that presents the Look and Feel of Client's existing website, and is developed, hosted and maintained by FIS pursuant to this Agreement, and at which a User may perform a Transaction; "Look and Feel" means the elements of graphics, design, organization, presentation, layout, user interface, navigation and stylistic convention (including the digital implementations thereof) which are provided by, and unique to, Client; "User" means any person or entity who processes, or for whom Client processes, a Transaction using the UI Services; "Virtual Terminal" means a secure payment site on the Internet that is developed, hosted and maintained by FIS pursuant to this Agreement, at which Client may process Transactions made by Users; and "Private Label Virtual Terminal" is a Virtual Terminal that presents the Look and Feel of Client and may include certain of the Client Brand Features, defined below.

5.1.2 FIS has the right to reject and remove any information made available to Users via the UI Services, which may include, without limitation, text, graphics, data and other similar materials ("Content") and/or trademarks, service marks, Look and Feel, logos and other distinctive brand features of Client supplied to FIS by Client ("Client Brand Features") at any time if FIS reasonably believes that any such materials infringe any third party Intellectual Property Right, are libelous or invade the privacy or violate other rights of any person, violate applicable Laws or regulations, jeopardize the health or safety of any person, or are otherwise detrimental to the goodwill of FIS.

5.1.3 FIS shall correct or cause to be corrected, with reasonable promptness and at its own cost, any errors in the UI Services that are caused by FIS's failure to perform according to the terms of this Agreement. In no event shall FIS be liable for any costs of corrections in excess of its own costs incurred to correct an error that FIS is solely responsible for correcting.

5.2 Ownership.

5.2.1 All Client Brand Features shall be owned exclusively by Client. To the extent FIS possesses any ownership rights in the Client Brand Features, FIS hereby irrevocably assigns to Client all right, title and interest in and to all such Client Brand Features, which includes, without limitation, all of Client's Intellectual Property Rights therein. For purposes of this Agreement, "Intellectual Property Rights" means any and all now known or hereafter known tangible and intangible: (i) rights associated with works of authorship throughout the world, including, without limitation, copyrights, moral rights, and mask-works; (ii) trademark and trade name rights and similar rights; (iv) trade secret rights; (v) patents, designs, algorithms and other industrial property rights; (vi) other intellectual property rights, whether arising by operation of law, contract, license, or otherwise; and (vii) registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing). If FIS has any such rights that cannot be assigned to Client, FIS waives the enforcement of such rights, and if FIS has any rights that cannot be assigned or waived, FIS hereby grants to Client an exclusive, irrevocable, perpetual, worldwide, fully paid license to such rights (which includes the right to sublicense). Client represents and warrants that it owns the Client Brand Features and all Intellectual Property Rights therein and that such Client Brand Features do not infringe upon any other material or violate or infringe upon the Intellectual Property Rights of any other party.

5.2.2 Subject only to Section 5.2.1 herein, all Intellectual Property Rights directly or indirectly related to the UI Services (which may include software) shall be owned exclusively by FIS (collectively, the "FIS Property"). To the extent Client possesses any ownership rights in the FIS Property, Client hereby irrevocably assigns to FIS all right, title and interest in and to all such FIS Property, which includes, without limitation, all applicable Intellectual Property Rights thereto. If Client has any such rights that cannot be assigned to FIS, Client waives the enforcement of such rights, and if Client has any rights that cannot be assigned or waived, Client hereby grants to FIS an exclusive, irrevocable, perpetual, worldwide, fully paid license to such rights (which includes the right to sublicense). FIS represents and warrants that it owns or has rights to the FIS Property and all Intellectual Property rights therein and that such FIS Property does not infringe upon any other material or violate or infringe upon the Intellectual Property Rights of any other party.



5.2.3 Client hereby grants FIS a non-exclusive, worldwide license to use the Client Brand Features for FIS to perform its obligations hereunder. The scope of the foregoing license shall be limited as specified herein, and shall not include any right to use, copy, modify, publish, license, sublicense, sell, market or distribute such Client Brand Features, unless expressly authorized herein. Client is not hereby granted any right or license to use any trademarks, trade names, or service marks of FIS or its affiliates and subsidiaries.

6. Client Warranties.

6.1 As a condition to its receipt of the Services, Client represents and warrants that Client shall execute and deliver any and all applications, agreements, certifications or other documents required by Networks or other third parties whose consent or approval is necessary for the processing of Transactions. "Network" is an entity or association that operates, under a common service mark, a system which permits participants to authorize, route, and settle transactions among themselves, including, for example, networks operated by VISA USA and MasterCard, Inc., NYCE Corporation, American Express, and Discover.

6.2 Client represents, warrants and agrees that it does and will comply with applicable Laws and regulations and Network rules, regulations or operating guidelines. Client shall notify FIS in writing as soon as possible in the event a claim is either threatened or filed against Client by any governmental organization having jurisdiction over the Client related to the Processing Services. Client shall also notify FIS in writing as soon as possible in the event a claim is either threatened or filed against Client relating to Transactions or the Services or a fine or other penalty is assessed or threatened against Client relating to Transactions or the Services.

6.3 Client represents, warrants and agrees that it is and will continue to be in full compliance with all applicable requirements of the Client Information Security Program of VISA, the Site Data Protection Program of MasterCard, and similar programs of other Networks, and any modifications to such programs that may occur from time to time. Upon the request of FIS, Client shall provide FIS with documentation reasonably satisfactory to FIS verifying compliance with this Section.

6.4 Client hereby grants FIS the full right, power and authority to request, receive and review any data or records reflected in a Transaction report. Client represents and warrants that it has the full right and authority to grant the rights set forth in the preceding sentence.

7. **Use of Services.** Except as otherwise permitted in this Agreement or in writing by FIS, Client agrees to use the Services only for its own internal business purposes to service its U.S.-based accounts for its Customers and will not sell or otherwise provide, directly or indirectly, any of the Services or any portion thereof to any third party. Client agrees that FIS may use all suggestions for improvement and comments regarding the Services that are furnished by Client to FIS in connection with this Agreement, without accounting or reservation. Except as otherwise may be set forth herein or in writing between the parties, Client shall be responsible for handling all Customer inquiries relating to the Services.

8. **Materials.** As a convenience, FIS may provide Client with sample forms, procedures, scripts, marketing materials or other similar information (collectively, "Materials"). Client shall have a license to use Materials, if any, solely in connection with its use of the Services during the Initial Term and any Renewal Term and solely in a manner that is consistent with the Specifications. Client's right to use the Materials shall expire immediately upon termination of this Agreement. Client is responsible for its use of Materials and bears sole liability for any such use.

9. **Training.** Except as may be otherwise agreed in writing, FIS will provide its standard initial train-the-trainer training regarding the use and operation of the Services to Client by web-based training or in person at an FIS training location (in which case, travel would be at Client's expense) at FIS's then-current rates and on a mutually-agreed date and time. Following such initial training, Client is responsible for its trainer(s) training Client's employees on the use and operation of the Services. Additional training may be provided by FIS upon Client's request, including onsite training at Client's location, as mutually agreed to by the parties regarding topics, duration and fees and expenses.

10. Fees and Other Charges.

10.1 Client shall pay all fees and charges set forth in the Pricing Schedule. Recurring fees shall be paid beginning on the Commencement Date. FIS may increase any pass-through fees (including, without limitation, postage, supplies, courier, data transmission, interchange rates, and telecommunications expenses) outside of its control as its cost for such items increases. Fees, costs and expenses owed by Client are exclusive of charges for materials, work, hardware, software or travel not otherwise detailed in this Agreement, a SOW, or Pricing Attachment. Travel time, if required, will be charged at FIS's standard hourly rates, but will not exceed eight (8) hours per day per resource.



10.2 FIS reserves the right to review and adjust convenience fee pricing (if applicable) on a semi-annual basis in June and December. This adjustment may be consistent with the then most recent ECI adjustment or three percent (3%) whichever is greater. Items that will be considered in the review of convenience fees may include, but are not limited to: regulatory changes, card association rate adjustments, card association category changes, bank/processor dues and assessments, average consumer payment amounts, and card type utilization.

10.3 For any amount that is not paid within thirty (30) days after its due date, Client shall pay a late fee equal to the lesser of one and one-half percent (1½%) per month of the unpaid amount or the maximum interest rate allowed by Law.

10.4 In the event of over-billing, FIS will correct the error by credit to Client. If Client was under-billed, FIS will add the under-billed amount to a future invoice. FIS may utilize any amounts owed to Client under this Agreement to pay or reimburse FIS for amounts owed by Client.

10.5 All charges and fees to be paid by Client under this Agreement are exclusive of any applicable withholding, sales, use, excise, value added or other taxes. Any such taxes for which FIS is legally or contractually responsible to collect from Client shall be billed by FIS and paid by Client. Client agrees to reimburse or indemnify FIS for any taxes, penalties and interest assessed by any taxing authority arising out of this Agreement. FIS shall pay and hold Client harmless for any taxes on FIS property, income or payroll. Client agrees to hold FIS harmless for any sales, use, excise, value added or other taxes assessed by a taxing authority arising out of this Agreement. In the event of any assessment by a taxing authority, both parties agree to cooperate with each other to resolve issues in order to minimize such assessment.

11. Intellectual Property.

11.1 Nothing herein shall give Client any right, title, or interest in the software, or any modifications and enhancements thereto. As between FIS and Client, the software is the sole and exclusive property of FIS, and FIS expressly reserves all rights to the software not expressly granted to Client herein. Client shall not directly or indirectly decompile, reverse compile, reverse engineer, reverse assemble or otherwise derive a source code equivalent for the software.

11.2 Any intellectual property rights that existed prior to the Effective Date shall belong solely to the party owning them at that time. Neither party shall be entitled to any copyright, trademark, trade name, trade secret or patent of the other party.

11.3 Client shall not alter, obscure or revise any proprietary, restrictive, trademark or copyright notice included with, affixed to, or displayed in, on or by the Services, software, or Specifications.

12. Confidentiality.

12.1 Subject to the California Public Records Act, each party shall treat information received from the other that is designated as "confidential" at or prior to disclosure ("Confidential Information") as strictly confidential. FIS designates the Services, software, Specifications and the terms of this Agreement, and all information related to the foregoing, as its Confidential Information. Client designates non-public financial information that is personally identifiable to a Customer (referenced in the Gramm-Leach-Bliley Act of 1999, or its equivalent under the applicable state Laws, as "Non-public Personal Information" or "NPI") as its Confidential Information.

12.2 Subject to the California Public Records Act, each party shall: (i) restrict disclosure of the other party's Confidential Information to employees, agents and Affiliates solely on a "need to know" basis in accordance with this Agreement; (ii) advise its employees and agents of their confidentiality obligations; (iii) require agents to protect and restrict the use of the other party's Confidential Information; (iv) use the same degree of care to protect the other party's Confidential Information as it uses to safeguard its own Confidential Information of similar importance, but in no event less than a reasonable degree of care; (v) establish procedural, physical and electronic safeguards, designed to meet the objectives of the FFIEC Interagency Guidelines, to prevent the compromise or unauthorized disclosure of Confidential Information; and (vi) notify the other party of any unauthorized possession or use of its Confidential Information as soon as possible following notice of that unauthorized use or possession. FIS shall promptly notify Client of any incident that has resulted or is likely to result in the misuse of NPI, and shall comply with all federal and state Laws, rules and regulations regarding NPI that are applicable to it as a third party processor.

12.3 Confidential Information shall remain the property of the party from or through whom it was provided. Except for NPI, neither party shall be obligated to preserve the confidentiality of any information that: (i) was previously known; (ii) is a matter of public knowledge; (iii) was or is independently developed; (iv) is released for disclosure with written



consent; or (v) is received from a third party to whom it was disclosed without restriction. Disclosure of Confidential Information shall be permitted if it is: (a) required by Law; (b) in connection with the tax treatment or tax structure of this Agreement; or (c) in response to a valid order of a U.S. court or other governmental body, provided the owner receives written notice and is afforded a reasonable opportunity to obtain a protective order. Upon termination of this Agreement, each party shall destroy the other party's Confidential Information relating to this Agreement in a manner designed to preserve its confidentiality, or, at the other party's written request and expense, return it to the disclosing party. Upon termination of this Agreement, each party shall destroy any remaining Confidential Information of the other party in the same manner or, if so requested, return it to the disclosing party at its expense.

13. Indemnification.

13.1 Client shall defend FIS and its officers, employees, directors, agents and shareholders, in their individual capacities or otherwise, from and against any and all Claims (as defined in this Section 13.1) asserted by a third party (other than an Affiliate of FIS) against FIS, and shall indemnify and hold harmless FIS from and against any damages, costs, and expenses of such third party awarded against FIS by a final court judgment or an agreement settling such Claims in accordance with this Section 13.1. As used in this Section 13.1, the term "Claim" means any action, litigation, or claim by a third party alleging or based on: (i) any personal injury or property damage caused by Client's gross negligence or willful misconduct in connection with this Agreement; (ii) Client's misuse of the Services, Materials, software, or Specifications; (iii) inaccurate or incomplete Data provided by or on behalf of Client; (iv) Client's use of the Services, and/or software with computer programs or services owned, licensed or provided by someone other than FIS; (v) Client's failure to comply with Laws; (vi) any claim of libel, violation of privacy rights, unfair competition or infringement of patents, trademarks, copyrights or other intellectual property caused by Client or a Customer; (vii) any circumstance, event or activity set forth in any of the Subsections 13.2 (a) – (e); or (ix) any Customer claim, action or suit.

13.2 FIS shall defend Client and its officers, employees, directors, agents and shareholders, in their individual capacities or otherwise, from and against any and all Claims (as defined in this Section 13.2) asserted by a third party (other than an Affiliate of Client or FIS) against Client, and shall indemnify and hold harmless Client from and against any damages, costs, and expenses of such third party awarded against Client by a final court judgment or an agreement settling such Claims in accordance with this Section 13.2. As used in this Section 13.2, the term "Claim" means any action, litigation, or claim by a third party alleging (i) personal injury or property damage caused by FIS's gross negligence or willful misconduct in connection with this Agreement; (ii) FIS's failure to comply with all federal Laws, rules and regulations applicable to FIS as a provider of Services; or (iii) that the Services or software infringes an effective U.S. Patent or a registered trademark or copyright; provided, however, that FIS shall not be liable for (and Client shall indemnify FIS against) any infringement or alleged infringement that results, in whole or in part, from: (a) use of the Services or software in a manner or for a purpose not specifically described in this Agreement or Specifications; (b) use of the Services or software in combination with computer programs, processes, hardware, software, data, systems, or services owned, licensed or provided by someone other than FIS; (c) Client's products or services; (d) modification, change, amendment, customization, or adaptation of any Services or software not made wholly by FIS; or (e) Client's failure to implement corrections or changes provided by FIS. If a claim of infringement has been asserted, or in FIS's opinion is about or likely to be asserted, FIS may, at its option either: (1) procure for Client the right to continue using the Services or software; (2) replace or modify the Services or software so that it becomes non-infringing; (3) terminate an applicable Schedule or SOW and refund all pre-paid fees covering future use of the Services or software; or (4) defend the action on Client's behalf and pay any associated costs or damages.

13.3 The obligation to indemnify under this Section 13 is contingent upon: (i) the indemnified party's promptly notifying the indemnifying party in writing of any claim subject to such indemnity obligation; (ii) the indemnifying party's having sole control over the defense and settlement of the claim; (iii) the indemnified party's reasonably cooperating during defense and settlement efforts; (iv) the claim's not arising, in whole or in part, out of the action or inaction of the indemnified party; and (v) the indemnified party's not making any admission, concession, consent judgment, default judgment or settlement of the claim or any part thereof.

14. Limitation of Liability, Disclaimer of Warranties, and Certain Losses.

14.1 Limitation of Liability. FIS'S TOTAL LIABILITY FOR A SERVICE IS LIMITED IN ALL CASES AND IN THE AGGREGATE TO THE AMOUNT OF FEES ACTUALLY COLLECTED BY FIS OR PAID BY CLIENT (AS APPLICABLE) FOR THE CORRESPONDING SERVICES DURING THE TWELVE (12) MONTHS PRECEDING THE DATE OF THE EVENT THAT IS THE BASIS FOR THE FIRST CLAIM. NOTWITHSTANDING THE FOREGOING, FIS SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, DELAY OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF BUSINESS PROFITS OR REVENUE, BUSINESS INTERRUPTION, LOSS OF INFORMATION, OR OTHER PECUNIARY LOSS), EVEN IF FIS WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.



14.2 Disclaimer of Liability for Certain Losses. Notwithstanding anything to the contrary contained in Section 12.1 above, under no circumstances shall FIS be liable for any losses, claims, demands, penalties, actions, causes of action, suits, obligations, liabilities, damages, delays, costs or expenses, including reasonable attorney's fees (collectively, "**Losses**") caused, directly or indirectly, in whole or in part, by: (i) Client; (ii) a third party, other than FIS's authorized agents; (iii) use of attachments, features, or devices not authorized by the Specifications; (iv) improper or inadequate conditions at a non-FIS site; (v) improper or incomplete installation not caused by FIS or its authorized agents; (vi) equipment changes, reconfigurations, upgrades or relocations performed by one other than FIS or its authorized agents; (vii) abuse, misuse, alteration or use that is inconsistent with the terms of this Agreement or Specifications; (viii) incorrect or incomplete Data supplied by Client or its agents; (ix) software, hardware or systems not supplied by FIS; (x) a Force Majeure Event; or (xi) a failure that is not directly attributable to FIS or under FIS's direct control. In the event of any error by FIS in processing any Data or preparing any report or file hereunder, FIS's sole obligation shall be to correct the error by reprocessing the affected Data or preparing and issuing a new file or report at no additional cost to Client; provided, however, FIS's obligation herein is contingent upon Client notifying FIS of the error within two (2) business days or two (2) processing cycles after Client receives the improperly processed Data, report or file.

14.3 Disclaimer of Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, FIS DISCLAIMS ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN) WITH RESPECT TO THE SERVICES, SOFTWARE, EQUIPMENT, AND MATERIALS PROVIDED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE, OR ERROR FREE OPERATION (EVEN IF CREATED BY THE INTERNATIONAL SALE OF GOODS CONVENTION, AND WHETHER OR NOT METAVANTE KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. IN ADDITION, FIS DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY PERSON OTHER THAN CLIENT WITH RESPECT TO THE SERVICES, SOFTWARE, EQUIPMENT, AND MATERIALS PROVIDED UNDER THIS AGREEMENT.

15. Outsourcing Management; TSP Audit and Vendor Diligence Information.

15.1 Outsourcing and TSP Diligence Generally. FIS will cooperate with Client to meet its responsibilities to diligence and audit FIS as its third party technology service provider (TSP), as contemplated by the FFIEC IT Examination Handbook and related guidelines (TSP Guidelines). FIS will regularly make available audit reports and materials that address Client's vendor management and diligence requirements under the TSP Guidelines. Specific information regarding the available materials meeting the TSP Guidelines is available under the "Vendor Diligence and Audit Materials" on the FIS Client Portal.

15.2 Vendor Diligence and Audit Materials. Through its FIS Client Portal and FIS Governance Site, Client will have continuous electronic access to audit reports, attestations, and other detailed information regarding FIS's internal systems testing and procedures, and FIS's information security and data privacy controls. These audit materials and attestation evidence FIS's compliance with all industry and regulatory standards and include recent independent audits (such as SSAE 16's), third party attestations and certifications (such as AT101's and PCI AOC's), and detailed information and testing results regarding physical, technical and administrative controls utilized by the Service business lines within FIS and the security of Client's Confidential Information.

15.3 Information Security and Risk Management In-Depth Conferences. Client may attend any or all of the FIS In-Depth Conferences, which provide detailed audit information and in-depth in-person discussions with FIS's senior executive team regarding FIS's information security and risk management processes and system testing results. The In-Depth Conferences provide Client with comprehensive vendor diligence information, including (i) a thorough, interactive review of FIS enterprise-wide security and system controls, and (ii) specific assessments of industry standards and best practices for financial technology information security and risk management. Currently, FIS offers four (4) In-Depth Conferences each year, with clients attending a two-day event onsite at different FIS facilities.

15.4 Governmental Access. FIS shall permit governmental agencies that regulate Client in connection with a Service performed by FIS to examine FIS's books and records to the same extent as if that Service was being performed by Client on its own premises, subject to FIS's confidentiality and security policies and procedures.

16. Notices. All notices given in connection with the Agreement must be in writing and delivered via overnight delivery. Notices shall be delivered to the address set forth in the Agreement. Notices to FIS shall include a copy (which shall not constitute notice) to the General Counsel at the same address. Telephone communications between FIS and Client and/or Customers may be monitored or recorded without further notice in order to maintain service quality.



17. Use of Names and Trademarks. Client shall review and approve in writing all Client related copy proposed to be used by FIS for advertising or public relations purposes prior to publication. FIS shall not allow Client related copy to be published in its advertisements and public relations programs prior to receiving such approval. FIS shall ensure that all published information is factual and that it does not in any way imply that Client endorses FIS's firm, service, and/or product.

FIS shall refer all inquiries from the news media to Client, and shall comply with the procedures of Client's Public Affairs staff regarding statements to the media relating to this Agreement.

If FIS receives a complaint from a citizen or the community, FIS shall inform Client as soon as possible and inform Client of any action taken to alleviate the situation.

18. Relationship. FIS is an independent contractor. Neither FIS nor any of its representatives are an employee, partner or joint venturer of Client. FIS has the sole obligation to supervise, manage and direct the performance of its obligations under this Agreement. FIS reserves the right to determine who will be assigned to perform its obligations, and to make replacements or reassignments as it deems appropriate. Each party shall be solely responsible for payment of compensation to its respective personnel, and assumes full responsibility for payment of all federal, state, local and foreign taxes or contributions imposed or required under unemployment insurance, social security and income tax laws with respect to such personnel. Except as expressly stated in this Agreement, neither party shall be an agent of the other, nor have any authority to represent the other in any matter. To the extent that FIS engages a subcontractor, FIS shall remain solely responsible for the performance of the subcontracted work. Client shall have no recourse, and shall assert no claim, against any subcontractor of FIS.

19. Insurance. FIS shall maintain the following minimum insurance coverage and limits: (i) statutory workers' compensation in accordance with all Federal, state, and local requirements; (ii) employer's liability insurance with limits of coverage of \$1,000,000 (a) per accident, bodily injury (including death) by accident, (b) per bodily injury (including death) by disease, and (c) per employee for bodily injury (including death) by disease as required by the state in which the Services are performed; (iii) commercial general liability with an aggregate of \$2,000,000, and \$1,000,000 per occurrence for bodily injury, property damage and personal injury; (iv) automobile liability insurance, including FIS-owned, leased, and non-owned vehicles with a single limit of \$1,000,000; (v) property insurance, covering the hardware and other equipment used by FIS to provide the Services; (vi) professional and technology errors and omissions, including network security and privacy liability coverage, with limits of \$5,000,000 per claim; (vii) umbrella (excess) liability insurance for the above-referenced commercial general liability and employer's liability coverage in the amount of \$5,000,000 per occurrence; and (viii) crime insurance, with coverage extended to include property of Client in the care, custody, or control of FIS, or for which FIS is legally liable, with limits of \$5,000,000 per claim.

20. Termination and Additional Remedies.

20.1 Termination. In addition to any other remedies, either party may terminate this Agreement on thirty (30) days advance written notice if the other party: (i) fails to cure a material breach within thirty (30) days of receiving written notice to do so; (ii) is the subject of a dissolution, reorganization, insolvency or bankruptcy action that is not dismissed within forty-five (45) days of being filed; (iii) suffers the appointment of a receiver, conservator or trustee; (iv) commits any act related to the Services with the intent to defraud the other party; or (v) discontinues performance under this Agreement because of a binding order of a court or regulatory body. If a breach cannot reasonably be cured within thirty (30) days, the non-breaching party may not terminate this Agreement so long as the breaching party promptly commences work and completes correction within ninety (90) days of receiving written notice of the breach. In addition, FIS may terminate this Agreement if Client (a) fails to cure any material violation of applicable Law within thirty (30) days of FIS requesting it to do so, or (b) sells, transfers or assigns all or substantially all of its Services-related accounts to a third party that does not agree in writing with FIS to be bound by the terms of this Agreement.

20.2 Termination for Convenience. At any time after month twenty-four (24) of the Initial Term, either party may terminate this Agreement for its convenience by giving the other party ninety (90) days' prior written notice, which notice shall specify the effective date of the termination. If Client elects to so terminate this Agreement, Client acknowledges that FIS shall suffer a material adverse impact on its business. It may not be possible to precisely determine the resulting damages. Thus, Client acknowledges that the amounts listed in this paragraph are a reasonable approximation of such damages. Client shall pay FIS reasonable and direct expenses incurred by FIS in connection with the termination of the Agreement, including but not limited to any capitalized and unamortized conversion fees, signing or incentive credits or bonuses, and all reasonable costs in connection with the disposition of equipment, facilities and contracts specifically related to FIS's performance of the Services under this Agreement (the "**Termination Fees**"). The Termination Fees shall be paid prior to FIS's performance of any termination assistance or delivery of any Client Data in connection with the termination, and, in any case, no later than the effective date of termination of the Agreement.



20.3 Due to the likelihood of irreparable injury, each party shall be entitled to seek an injunction against the other for any breach of confidentiality, indemnification and intellectual property obligations.

21. Export Restrictions and Unlawful Activity.

21.1 FIS's Confidential Information is subject to export controls under applicable federal and state Laws, rules and regulations. Accordingly, Client shall: (i) remain in compliance with all requirements associated with such Laws; (ii) cooperate fully with any audit related to such Laws; and (iii) not utilize FIS's Confidential Information in any country that is embargoed by the U.S. government. Client shall be solely responsible for the importation of FIS's Confidential Information, including obtaining any approval or permit necessary for importation or use.

21.2 Neither Client nor any of its directors, officers, agents, employees or other persons associated with or acting on its behalf: (i) have received or will receive any unlawful contribution, gift, entertainment or other payment from FIS; or (ii) is in violation of, or will violate any applicable anti-corruption or anti-bribery laws, rules or regulations. FIS shall have an irrevocable right to immediately terminate this Agreement or any other relationship with Client if this subsection is breached.

22. Miscellaneous.

22.1 Client shall not assign, subrogate or transfer any interest, obligation or right arising out of this Agreement without prior written consent from FIS, which shall not be unreasonably withheld. Any dissolution, consolidation, merger, transfer or reorganization of a majority of the assets or stock of Client shall constitute an attempted assignment and shall be void from its inception. Subject to the foregoing, the terms of this Agreement shall be binding upon and inure to the benefit of permitted successors and assigns.

22.2 The Agreement shall be governed by the laws of the state of California, without regard to internal principles relating to conflict of laws. Any disputes between FIS and Client relating to the implementation or administration of the Services shall be resolved in accordance with this section.

The parties shall first attempt to resolve the dispute informally in meetings or communications between FIS and Client.

If the dispute remains unresolved fifteen (15) days after it first arises, FIS may request that Client's CEO/General Manager issue a recommended decision on the matter in dispute. Client's CEO/General Manager shall issue the recommended decision in writing and provide a copy to FIS.

If the dispute remains unresolved after review by Client's CEO/General Manager, either party may seek judicial resolution of the dispute in an appropriate Court of the State of California.

Pending final resolution of a dispute under this section, FIS shall proceed diligently with performance in accordance with the Agreement and Client's CEO/General Manager's recommended decision.

22.3 FIS shall not be liable for any loss, damage or failure due to causes beyond its control, including strikes, riots, earthquakes, epidemics, terrorist actions, wars, fires, floods, weather, power failure, telecommunications outage, acts of God or other failures, interruptions or errors not directly caused by FIS ("Force Majeure Event").

22.4 Each party represents and warrants that it has full legal power and authority to enter into and perform its obligations without any additional consent or approval.

22.5 The Agreement (including all Schedules and the Pricing Attachment(s)) together with any attachments thereto, constitute the entire agreement and understanding of the parties with respect to its subject matter. All prior agreements, understandings and representations regarding the same or similar services are superseded in their entirety. In the event of a conflict, ambiguity or contradiction in documents, the documents will take precedence over each other in accordance with the following ranking: (i) Schedules; (ii) exhibits and attachments; (iii) Specifications; (iv) the general terms of this Agreement; and (v) RFQ-FIN14-158. The Agreement may only be modified by a written document signed by both parties. The terms and conditions of any purchase order issued by Client shall not be applicable to the Services provided pursuant to this Agreement. The parties do not intend, nor shall there be, any third party beneficiary rights.

22.6 No waiver of any provisions of this Agreement and no consent to any default under this Agreement shall be effective unless in writing and signed by the party against whom such waiver or consent is claimed. No course of dealing or failure to strictly enforce any provision of this Agreement shall be construed as a waiver of such provision for any



party's rights. Waiver by a party of any default by the other party shall not be deemed a waiver of any other default.

22.7 If any provision(s) of this Agreement, including any Schedules, attachments and exhibits hereto, is determined to be invalid, illegal, void, or unenforceable by reason of any Law, rule or regulation, administrative order, judicial decision, or public policy, such provision(s) shall not affect any other provision of this Agreement, and this Agreement shall be interpreted and construed as if the invalid, illegal, void, or unenforceable provision had not been included to the extent necessary to bring this Agreement within the requirements of such Law, rule or regulation, administrative order, judicial decision, or public policy. In addition, in such event, the parties agree to negotiate in good faith to modify this Agreement to carry out the parties' original intent as closely as possible and to the extent lawful. This Agreement shall not be construed more strongly against either party, regardless of who is more responsible for its preparation. The headings that appear in this Agreement are inserted for convenience only and do not limit or extend its scope.

22.8 Termination of this Agreement shall not impact any right or obligation arising prior to termination, and in any event, Sections 11, 12, 13, 14, 15, 17, 22.2, and 22.8 of this Agreement shall survive termination of this Agreement.

23. **Equal Opportunity.** FIS 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. FIS shall take action to ensure that applicants and employees are treated without regard to the above.

SCOPE OF WORK - ATTACHMENT A
FIN14-158
CREDIT/DEBIT CARD PROCESSING AND MERCHANT SERVICES

Scope of Work

Vendor shall provide all services necessary for credit/debit card processing and merchant services, to include Visa, MasterCard, American Express, Discover, and personal identification number (PIN)-based credit and debit cards. Vendor's card processing system is compatible with Genfare SPX Vendstar-3 Ticket Vending Machines.

A. Minimum Performance Standards

1. The Agency intends to maintain the acceptance of Visa, MasterCard, American Express and Discover credit cards; it might accept additional brands in the future. In addition, the Agency will continue to accept all debit cards that are capable of being processed through the national debit and credit networks.
2. It is understood that the vendor, in order to fulfill some of the requirements, might utilize alliances with other processing organizations, including the card associations, hardware manufacturers and/or distributors, and front-end processors. The vendor must describe when and how these alliances will be utilized to meet the Agency's requirements.
3. System implementation, customer service and training of Agency personnel.

B. Transaction Processing

The Agency estimates the annual processing of approximately \$603,396 in credit card transactions. Listed below is the Agency's estimated monthly and annual transaction volume for the TVMs.

SCOPE OF WORK - ATTACHMENT A
FIN14-158
CREDIT/DEBIT CARD PROCESSING AND MERCHANT SERVICES

Table I

TVM Tickets Passes & Fares	Full Fare	Senior/ Disable	Youth	Totals
1-Way Ticket	1.50	\$ 0.60	N/A	
Day Pass	4.00	\$ 1.85	N/A	
7- Day Pass	15.00	\$ 7.00	\$ 11.00	
31 - Day Pass	47.00	\$ 23.50	\$ 35.00	
Estimated Number of Monthly Transactions				
1-Way Ticket	335	838	0	1,173
Day Pass	1,131	2,718	0	3,849
7- Day Pass	570	1,437	411	2,418
31 - Day Pass	75	43	345	462
Totals	2,111	5,036	756	7,903
Estimated Number of Yearly Transactions				
1-Way Ticket	4,023	10,057	0	14,079
Day Pass	13,576	32,616	0	46,192
7- Day Pass	6,838	17,240	4,937	29,015
31 - Day Pass	899	514	4,138	5,550
Totals	25,336	60,426	9,074	94,837
Estimated Monthly Dollar Amount				
1-Way Ticket	\$ 503	\$ 503	\$ -	\$ 1,006
Day Pass	\$ 4,525	\$ 5,028	\$ -	\$ 9,554
7- Day Pass	\$ 8,548	\$ 10,057	\$ 4,525	\$ 23,130
31 - Day Pass	\$ 3,520	\$ 1,006	\$ 12,068	\$ 16,593
Totals	\$ 17,096	\$ 16,594	\$ 16,593	\$ 50,284
Estimated Annual Dollar Amount				
1-Way Ticket	\$ 6,034	\$ 6,034	\$ -	\$ 12,068
Day Pass	\$ 54,306	\$ 60,340	\$ -	\$ 114,645
7- Day Pass	\$ 102,577	\$ 120,679	\$ 54,306	\$ 277,562
31 - Day Pass	\$ 42,238	\$ 12,068	\$ 144,815	\$ 199,121
Totals	\$ 205,155	\$ 199,121	\$ 199,121	\$ 603,396

SCOPE OF WORK - ATTACHMENT A
FIN14-158
CREDIT/DEBIT CARD PROCESSING AND MERCHANT SERVICES

C. Authorization

1. Perform an exact validation on the credit card number and the credit card expiration date
2. Support timeout reversals
3. Ensure that each transaction is assigned a unique identification number that will be stored and remain with the transaction through the transaction cycle, including authorization, adjustments, settlement, funding and reconciliation
4. Return an “accept” or “decline” message to the merchant within industry acceptable timeframe
5. Support edits and voids before transactions are settled
6. Process transaction in the most cost saving alternative available

D. Settlement

1. Cut off batch activity precisely when settlement occurs. For example, if a batch is manually or automatically settled at 5:00p.m., transactions at 5:01 p.m. would be part of the next day batch
2. Generate unique batch reference number, approval notification, and confirmation of settlement. The batch reference number must stay with the batch throughout the payment cycle
3. Allow merchant to create batch settlement reports that provide both summary and detail information for all card types. The batch report headers should include the merchants name, merchant number, and address. The body of the report should include the settlement approval code number and processing date
4. Have a procedure in place to handle suspended (failed) batch transmissions. The procedure must include notification to the merchant so that the problem can be resolved in time to prevent the transactions in that batch from being downgraded by the card associations
5. Forward all transactions for further processing to the card associations, alliance/partner, third party provider or entity, in a timely manner so that the transactions qualify for the appropriate interchange categories without downgrading, though incurring the lowest possible pass-through fees to the Agency

SCOPE OF WORK - ATTACHMENT A
FIN14-158
CREDIT/DEBIT CARD PROCESSING AND MERCHANT SERVICES

6. Credit the Agency's bank account with batch amount immediately after batches have been transmitted. Credit to the Agency bank account should occur no later than 24 hours after transaction is processed and should include all accepted cards (Visa, Mastercard, AMEX and Discover)

E. Transmission of Data

1. Initiate or relay data transmission to other processor and/or card associations via secure means in accordance with industry standard guidelines for speed, encryption and overall security
2. The vendor shall be responsible for the loss or security compromise of all Agency transaction data in its possession, to include notifying cardholders when security is compromised and recreating transactions when data is lost

F. Credits and Refunds

1. Issue credits in the case of an error in payment amount, card number, return, incorrect amount, etc. The system must be able to process and obtain authorization of debt/credit card returns for partial or full credit
2. Provide separate reports at multiple levels, so that refunds may be mapped back to a specific merchant location or department, with summaries and totals being possible at the chain code level

G. Retrievals and Chargebacks

1. Notify the Agency's Finance Department by fax or e-mail regarding retrievals and chargebacks that have been initiated by a cardholder's bank. Notification needs to include:
 - a. Original transaction date
 - b. Merchant name
 - c. Merchant number
 - d. Transaction number
 - e. Last four digits of cardholder account number
 - f. Dollar amount
 - g. Reason for chargeback
 - h. Letters or other documents from cardholder

SCOPE OF WORK - ATTACHMENT A
FIN14-158
CREDIT/DEBIT CARD PROCESSING AND MERCHANT SERVICES

2. Receive requested information from the merchant via fax or e-mail, and forward such information to the card associations and/or card issuing bank as necessary. The vendor must confirm the receipt of such faxes or e-mails.
3. Notify the Agency the outcome of the chargeback process.
4. If the chargeback is approved, recover the discount fee and any other applicable cost associated with that transaction on behalf of the Agency and debit the designated bank account for the amount of the chargeback.
5. Give the Agency 30 days from the vendor notification date to provide the chargeback necessary documentation.

H. Reporting

1. The vendor shall provide real-time online reporting to retrieve all reports used by the Agency to manage the overall bank card acceptance program. These reports should provide the Agency with:
 - a. Aggregate transaction information for merchant
 - b. Daily settlement totals by merchant
 - c. Chargeback information
 - d. Daily transaction detail by merchant
 - e. Summary of transactions
 - f. Refunds or adjustments due to the Agency
2. The vendor is responsible for managing the access of information by the merchants, whether the information is delivered via online reporting system, email or hardcopy.
3. The vendor will be responsible for safeguarding all reports, particularly those reports that contain cardholder information, following all compliance regulations with Payment Card Industry (PCI) guidelines, card association regulations and federal laws.
4. The vendor will comply with all applicable industry guidelines and federal law pertaining to the storage period for financial information.



PRICING ATTACHMENT

Products and Services Schedule

FIS will provide to Client transaction processing (merchant) services to all applications under an Agency Funded Interchange Pass-through pricing model. FIS reserves the right to not accept any payment type in situations where doing so may be in violation of the rules and regulations governing that payment type.

Merchant Services	Rate	Frequency
Visa and MasterCard Interchange Rate ¹	Pass-through ²	Per Transaction and Volume
Discover Discount Rate	Pass-through ³	Per Transaction and Volume
American Express Discount Rate	Pass-through ⁴	Per Transaction and Volume
Debit Card Network Rate	Pass-through ⁵	Per Transaction and Volume
Payment Processing Fee ⁶	0.15%	Per Volume
Transaction Based Rate ⁷	\$0.25	Per Transaction

Ancillary Services	Rate	Frequency
Implementation & Setup	\$500.00	One Time
Customer Support and Reporting	\$50.00	Per Application Per Month
Chargebacks and Adjustments	\$20.00	Per Event
48 hr. Settlement (ACH)	Waived	Per Settlement

¹ MasterCard, Visa Credit and Debit, Signature, Infinite, and Rewards cards are eligible for this program.

² Pass-through includes all Interchange Qualifications rates (per volume and per item fees), dues, acquirer fees, and assessments. These rates may vary by card type, transactions, and over time, and rates are subject to change solely at the determination of the association or issuer.

³ Pass-through includes all Discover Network rates (per volume and per item fees) and acquirer fees. Rates are subject to change solely at the determination of the network.

⁴ Pass-through includes all American Express Network rates (per volume and per item fees) and acquirer fees. Rates are subject to change solely at the determination of the network.

⁵ Pass-through includes all Debit Network rates (per volume and per item fees) and acquirer fees. These rates may vary by network and rates are subject to change solely at the determination of the networks.

⁶ Applies to the following Payment Types: Visa, MasterCard, Discover or Amex and Pin or PINless Debit. FIS Processing Fee is assessed for electronic authorization, capture, and deposit to a Customer's bank account.

⁷ Payment Types included: Credit and Debit. Transaction Based Rate is a fee that is assessed for the administration services provided by FIS PayDirect for the maintenance and service of FIS PayDirect software applications.

SCOPE OF WORK - ATTACHMENT A
FIN14-158
CREDIT/DEBIT CARD PROCESSING AND MERCHANT SERVICES

I. Customer Service

1. The vendor shall assign Relationship Manager (RM) to the Agency. The RM will be the principal contact for the Finance Department on all matters. The RM will be reasonably available during normal business hours via email and telephone. The vendor will identify a backup to the RM at all times.
2. The vendor shall provide a customer service (help desk) telephone number to be used by the Finance Department or individual merchants for routine questions and troubleshooting.

J. Vendor Performance

The Agency will work with the vendor to resolve all quality control and performance issues. However, the Agency will not accept service performance below the standards established in this RFQ. The Finance Department shall notify the vendor when performance standards are not met and what remedies may be invoked. Remedies may include withholding or adjusting payment to the vendor.

RESOLUTION NO. 298-17

**AUTHORIZATION FOR THE EXECUTION OF THE
CERTIFICATION AND ASSURANCES FOR FISCAL YEAR
2016-2017 LOW CARBON TRANSIT OPERATIONS
PROGRAM (LCTOP).**

WHEREAS, OMNITRANS is an eligible project sponsor and may receive state funding from the Low Carbon Transit Operations Program (LCTOP) now or sometime in the future for transit projects; and

WHEREAS, the statutes related to state-funded transit projects require a local or regional implementing agency to abide by various regulations; and

WHEREAS, Senate Bill 862 (2014) named the Department of Transportation (Department) as the administrative agency for the LCTOP; and

WHEREAS, the Department has developed guidelines for the purpose of administering and distributing LCTOP funds to eligible project sponsors (local agencies); and

WHEREAS, OMNITRANS wishes to delegate authorization to execute these documents and any amendments thereto to the Chief Executive Officer/General Manager.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of OMNITRANS that the fund recipient agrees to comply with all conditions and requirements set forth in the Certification and Assurances document and applicable statutes, regulations and guidelines for all LCTOP funded transit projects.

NOW THEREFORE, BE IT FURTHER RESOLVED that the Chief Executive Officer/General Manager be authorized to execute all required documents of the LCTOP program and any Amendments thereto with the California Department of Transportation.

Section 1. The fund recipient, Omnitrans, agrees to comply with all conditions and requirements set forth in the Certification and Assurances and the Authorized Agent documents and applicable statutes, regulations, and guidelines for all LCTOP funded transit projects.

Section 2. Omnitrans CEO/General Manager, P. Scott Graham, is authorized to execute all required documents of the LCTOP Program and any amendments thereto with the Department.

Section 3. The submittal of the following project nominations and allocation requests to the Department in Fiscal Year 2016/2017 LCTOP funds are hereby authorized:

Project Name: Omnitrans Route 290 Pilot Program Expansion

Amount of LCTOP Funds Requested: \$69,826

Project Description: Omnitrans has requested funding to continue its 290 freeway express program, implemented in September 2015. With additional LCTOP funding, Omnitrans will be able to continue to run trips on Route 290, a route that has increased in ridership consistently since its launch.

Project Lead: Omnitrans

Section 4. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED at an Omnitrans Board Meeting held on March 1, 2017.

CERTIFICATION

The undersigned duly qualified CEO/General Manager acting on behalf of Omnitrans certifies that the foregoing is a true and correct copy of a resolution adopted at a legally convened meeting of the Omnitrans Board of Directors held on this 1st day of March 2017, by the following vote to wit:

AYES:

NOES:

ABSENT:

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

The foregoing resolution is hereby approved this 1st day of March 2017.

Sam Spagnolo
Chair, Omnitrans Board of Directors

Approved as to form:

Haviva Shane
Counsel for Omnitrans

RESOLUTION NO. 299-17

**A RESOLUTION AUTHORIZING THE CEO/GENERAL
MANAGER TO EXECUTE AND COMPLETE THE FILING OF
APPLICATION AND REQUESTS FOR REIMBURSEMENTS
FOR THE GOVERNOR’S OFFICE OF HOMELAND SECURITY
FISCAL YEAR 2016-2017 CALIFORNIA TRANSIT SECURITY
GRANT PROGRAM FUNDING – (CTSGP)**

WHEREAS, Omnitrans is a public entity established under the laws of the State of California for the purpose of providing transportation services in the County of San Bernardino who desires to apply for and obtain funding for transit security purposes.

WHEREAS, the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 authorizes the issuance of general obligation bonds for specified purposes, including, but not limited to, funding made available for capital projects that provide increased protection against security and safety threats, and for capital expenditures to increase the capacity of transit operators to develop disaster response transportation systems; and

WHEREAS, the California Emergency Management Agency (Cal EMA) administers such funds deposited in the Transit System Safety, Security, and Disaster Response Account under the California Transit Security Grant Program (CTSGP); and

WHEREAS, OMNITRANS is eligible to receive CTSGP funds; and

WHEREAS, OMNITRANS will apply for Fiscal Year 2016 CTSGP funds in an amount up to \$102,853 for Safety and Security Upgrades to ensure the safety and security of OMNITRANS facilities in accordance with the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006; and

WHEREAS, OMNITRANS recognizes that it is responsible for compliance with all Cal EMA CTSGP grant assurances, and state and federal laws, including, but not limited to, laws governing the use of bond funds; and

WHEREAS, Cal EMA requires OMNITRANS to complete and submit a Governing Body Resolution for the purposes of identifying agent(s) authorized to act on behalf of OMNITRANS to execute actions necessary to obtain CTSGP funds from Cal EMA and ensure continued compliance with Cal EMA CTSGP assurances, and state and federal laws.

WHEREAS, Resolution No. 299-17 would authorize filing application with and requesting reimbursements from the California Office of Homeland Security (OHS) and would satisfy grant application requirements for the Fiscal Year 2016 Transit Security Grant Program.

NOW, THEREFORE, BE IT RESOLVED BY THE OMNITRANS BOARD OF DIRECTORS: that **Omnitrans' CEO/General Manager** or his/her designee is authorized to execute and file applications for the federal Department of Homeland Security and subgranted through the State of California, Office of Homeland Security.

CERTIFICATION

The undersigned duly qualified CEO/General Manager acting on behalf of Omnitrans certifies that the foregoing is a true and correct copy of a resolution adopted at a legally convened meeting of the Omnitrans Board of Directors held on this 1st day of March 2017, by the following vote to wit:

AYES:

NOES:

ABSENT:

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

The foregoing resolution is hereby approved this 1st day of March 2017.

Sam Spagnolo
Chair, Omnitrans Board of Directors

Approved as to form:

Haviva Shane
Counsel for Omnitrans

ITEM # E10

DATE: March 1, 2017

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Wendy Williams, Director of Marketing & Planning

**SUBJECT: TRANSFER AGREEMENT WITH RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

FORM MOTION

Authorize the CEO/General Manager to execute the Cooperative Service/Transfer Agreement between Omnitrans and Riverside County Transportation Commission.

This item was reviewed by legal counsel Burke, Williams and Sorensen. This item was also reviewed by the Plans and Programs Committee at its August 22, 2016 meeting, and recommended for approval.

BACKGROUND

Omnitrans Route 215 is a freeway express route on Interstate 215 that connects Downtown San Bernardino and Downtown Riverside with stops at each city's transit center. In January 2017, Riverside Transit Agency (RTA) closed the Riverside Transit Center and moved to a series of street stops approximately 0.3 miles away.

As a result of this change and the resulting reduction in travel time in Riverside, Omnitrans added service to the Downtown Riverside Metrolink Station. This extension promotes intermodal connectivity between rail and bus. This benefits Metrolink riders as the rail connection between Riverside and San Bernardino has reached capacity. An example of this is only half of the Inland Empire-Orange County Line (IEOC) trains make the connection into San Bernardino.

Omnitrans entered into discussions with the Riverside County Transportation Commission (RCTC) for access to a stop at the Metrolink station and for funding for this enhanced connection. This extension offers Riverside County residents with a direct connection to the higher frequency and longer service span along the San Bernardino Metrolink line, which RCTC values because of the constraints on the rail line between San Bernardino and Riverside.

San Bernardino county residents benefit from this extension by improving the connections to Metrolink's Riverside, 91, IEOC and Perris Valley lines.

RCTC supports this connection in line with their goal of increasing Metrolink ridership and providing greater connectivity to their Metrolink stations.

Currently, Omnitrans has a transfer agreement with Metrolink, where Metrolink pays Omnitrans one-half of a base fare for each transferring rider to/from Metrolink. This is Metrolink's standard transfer agreement with nearly all connecting transit agencies in Southern California.

In Riverside County, RCTC has offered to pay transit operators the remaining half-fare in order to generate additional bus service to the Metrolink lines. RCTC has offered to do the same for Omnitrans' Route 215, which will connect the Metrolink Station at the San Bernardino Transit Center in Summer 2017 and the Downtown Riverside Metrolink Station.

In total, this agreement could generate \$10,000-\$20,000 per year to support the extended service to the Downtown Riverside Metrolink station.

CONCLUSION

When the Riverside Transit Center closed in January 2017, Omnitrans reconfigured service in Downtown Riverside. Entering into a transfer agreement with RCTC allows for Omnitrans to be compensated for adding service to the Downtown Riverside Metrolink station by RCTC.

PSG:WW:JB

INTERAGENCY FIXED ROUTE TRANSFER AGREEMENT
BETWEEN THE
RIVERSIDE COUNTY TRANSPORTATION COMMISSION
AND
OMNITRANS

THIS INTERAGENCY FIXED ROUTE TRANSFER AGREEMENT is effective as of this ____ day of _____ 2017 by and between Omnitrans, 1700 West Fifth Street, San Bernardino, CA 92411 (hereinafter referred to as “OMNITRANS”), and Riverside County Transportation Commission, 4080 Lemon Street, 3rd Floor, Riverside, California 92501, a public agency (hereinafter referred to as “RCTC”). OMNITRANS and RCTC are sometimes referred to herein, individually as “Party” and collectively, as the “Parties”.

RECITALS

- A. RCTC and OMNITRANS desire to enter into this Agreement to define RCTC’s financial commitments, and OMNITRANS’ commitments related to funding to be provided by RCTC.
- B. OMNITRANS, a Joint Powers Authority, provides fixed route services operating in the San Bernardino Valley. OMNITRANS’ service area is bounded by the San Bernardino Mountains to the north, the Los Angeles County Line to the west, the Riverside County Line to the south, and the Yucaipa Valley on the east.
- C. RCTC is the County Transportation Commission for the County of Riverside and provides funding for public transportation services operating in Riverside County.
- D. OMNITRANS provides limited public transportation services connecting its service area to points within Riverside County. The purpose of this Agreement is to facilitate ridership by passengers originating on OMNITRANS’ system and desiring to transfer to Metrolink commuter rail services and vice versa.
- E. OMNITRANS has an existing transfer agreement with the Southern California Regional Rail Authority (SCRRA or METROLINK) that includes the Metrolink stations within this Agreement.
- F. The Parties desire to enter into this Agreement to facilitate transfers between the transportation systems described herein and thereby provide greater convenience and mobility for transportation users.

Now, therefore, in consideration of their mutual obligations set forth herein, the Parties agree as follows:

- 1. Subject to paragraph 2 of this Agreement, OMNITRANS will accept valid Metrolink fare media as a transfer having a value equal to OMNITRANS’ base fare at all Route 215 bus stops between San Bernardino and Riverside as identified in Exhibit “A”.

2. OMNITRANS shall honor valid Metrolink fare media along OMNITRANS' Route 215 bus stops between Riverside and San Bernardino, during the period from one hour before to one hour after Metrolink's service hours on Route 215, under the following conditions.
 - a. One-way tickets valid for the date of travel will be honored for one (1) boarding at the downtown Riverside Metrolink Station, or at the San Bernardino Transit Center following the extension of Metrolink to the San Bernardino Transit Center.
 - b. Round-trip tickets valid for the date of travel will be honored for boardings to or from the downtown Riverside Metrolink Station, or to or from the San Bernardino Transit Center following the extension of Metrolink to the San Bernardino Transit Center at any stop in Exhibit "A."
 - c. Seven-day passes will be honored on all boardings to or from the downtown Riverside Metrolink Station, or to or from the San Bernardino Transit Center following the extension of Metrolink to the San Bernardino Transit Center at any stop in Exhibit "A" if the seven-day pass has already been validated on the day of travel.
 - d. Monthly passes will be honored on all boardings to or from the downtown Riverside Metrolink Station or to or from the San Bernardino Transit Center following the extension of Metrolink to the San Bernardino Transit Center at any stop in Exhibit "A."
3. OMNITRANS shall be reimbursed by RCTC as provided herein at the rate of one-half of one OMNITRANS base fare charge per boarding for which no fare was collected pursuant to Sections 1 and 2 of this Agreement. OMNITRANS' current base fare is \$1.75 and OMNITRANS will notify RCTC of base fare changes, which will replace the current base fare. Pursuant to OMNITRANS' transfer agreement with SCRRA, the other half of the base fare charge will be reimbursed by SCRRA.
4. For purposes of counting the number of boardings for which reimbursement is required pursuant to Section 3 of this Agreement, OMNITRANS shall estimate the number of passengers for which no fare was collected pursuant to Sections 1 and 2 of this Agreement using 100 percent ridership counts (farebox) conducted by OMNITRANS.
5. OMNITRANS shall submit quarterly invoices to RCTC for reimbursement for transfers. OMNITRANS shall not seek reimbursement from RCTC for any fare, or portion thereof, which is to be paid by SCRRA under OMNITRANS' transfer agreement with SCRRA. Invoices shall specify the number of boardings for which METROLINK fare media was accepted as a transfer, and the agreed reimbursement rate specified in paragraph 3 above. Invoices shall reference the agreement number and shall be submitted as follows:

To RCTC: Riverside County Transportation Commission
 Attn: Rail Department
 4080 Lemon Street, 3rd Floor
 Riverside, CA 92501

6. Complete and accurate invoices submitted by the 30th day following the end of the quarter shall be paid within thirty (30) days of approval of the invoice.
7. Disagreements concerning the number of passengers transferring between METROLINK and OMNITRANS services shall be resolved by making a good faith effort to create a joint survey team, to include authorized representative of each of RCTC and OMNITRANS, whose task would be to conduct a passenger survey to determine transfer rates.
8. To facilitate effective operations and communications, the results of the transfer program will be reviewed quarterly by RCTC and OMNITRANS during the first year of this Agreement.
9. Each Party shall cooperate in the dissemination of information to the public regarding the transfer document and the services offered by the other Party.
10. Each Party shall notify the other in advance of implementing plans for changes in its operations and/or services, which may affect the other Party's operations and/or services.
11. Each Party shall notify the other Party within thirty (30) days of adopting any fare changes that might affect reimbursement rates or any aspect of transfer privileges.
12. OMNITRANS agrees to indemnify and hold RCTC harmless from and against all losses, damages, actions and expenses (including attorney's fees) on account of bodily injury to or death of any person or damage to or loss of use of property incident to or arising from operations of OMNITRANS under the terms of this Agreement.
13. Each Party reserves the right to cancel this Agreement upon thirty (30) days prior written notice to the other Party.
14. Notices hereunder shall be sent to the Parties as follows:

TO OMNITRANS: Omnitrans
1700 West Fifth Street
San Bernardino, CA 92411
Attention: Jeremiah Bryant
Service Planning Manager

TO RCTC: Riverside County Transportation Commission
4080 Lemon Street, 3rd Floor
Riverside, CA 92501
Attention: Sheldon Peterson
Rail Manager

15. This Agreement constitutes the entire agreement between the Parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing by the Parties.

16. This Agreement is made and entered into in the State of California and in all respects is to be interpreted, enforced and governed by and under the laws of California.
17. This Agreement may be executed in counterparts, each of which will constitute an original. Facsimile signatures may be used to effectuate and bind the Parties to the terms and conditions of this Agreement, and shall have the same force and effect as original signatures.
18. Each of the individuals executing this Agreement represents that he or she is duly authorized to bind and act on behalf of such Party.

[Signatures on following page]

INTERAGENCY FIXED ROUTE TRANSFER AGREEMENT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. XXXXXX to be executed on the date first above written.

OMNITRANS

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

By: _____
Chief Executive Officer

By: _____
Executive Director

APPROVED AS TO FORM:

APPROVED AS TO FORM

By: _____
General Counsel

By: _____
Best Best & Krieger LLP
General Counsel to the Riverside County
Transportation Commission

EXHIBIT “A”

Route Subject to Interagency Transfer Agreement

[attached behind this page]



1700 W. Fifth St.
San Bernardino, CA 92411
909-379-7100
www.omnitrans.org

ITEM # F1

DATE: March 1, 2017

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

FROM: P. Scott Graham, CEO/General Manager

SUBJECT: CEO/GENERAL MANAGER'S REPORT

PSG:vd

ITEM # _____ F2 _____

DATE: March 1, 2017

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Maurice Mansion, Treasury Manager

SUBJECT: FISCAL YEAR 2016-17 ANNUAL BUDGET – SPECIAL TRANSIT SERVICES

FORM MOTION

Adopt the Special Transit Services Fiscal Year 2016-17 Annual Budget.

This item was approved by the VTrans Board of Directors at its meeting on February 3, 2017, and the item now requires approval by the Omnitrans Board of Directors.

BACKGROUND

On November 4, 2015, the SBCTA Board of Directors received the Proposed Transition Plan and Financial Analysis from Omnitrans, including additional information/clarification to the Proposed Plan as requested by SBCTA, and approved a resolution designating Omnitrans as the San Bernardino Valley Consolidated Transportation Services Agency (CTSA) for a period of 5 years. The CTSA was incorporated into the Board approved Omnitrans Special Transit Services (STS) Department. Although a CTSA budget did exist upon assuming the designation, budget adjustments are required to meet the both personnel and program requirements for the remainder of FY17. Working with SBCTA staff, those adjustments were identified, and subsequently approved by the SBCTA Board of Directors on February 1, 2017.

OPERATING BUDGET

The proposed FY 2016-17 operating budget of \$2,129,805.17 is comprised of Salary and Benefits and the program cost to operate the following programs:

Operating	Fiscal Year 2017
STS Operating	\$ 509,193.34
STS Maintenance	\$ 278,309.38
Travel Training	\$ 255,894.37
Valley TREP	\$ 82,583.13
Taxi	\$ 49,721.10
TREP	\$ 300,081.94
Community Partners	\$ 654,021.92
TOTAL	\$ 2,129,805.17

CONCLUSION

Adopt the Special Transit Services Fiscal Year 2016-17 Annual Budget.

PSG:DW:MM

ITEM # _____ F3 _____

DATE: March 1, 2017

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE AWARD – PURCHASE ORDERS ITS17-46
DATACENTER AND HARDWARE REFRESH**

FORM MOTION

Authorize the CEO/General Manager to award Purchase Orders ITS17-46 (A-D) as listed below for the provision of Datacenter and Hardware Refresh in an aggregate amount of \$310,673.71, plus a contingency of \$6,719.00, and a 3.27% Cost Allocation Plan (CAP) of \$10,149.85, for a total not-to-exceed amount of \$327,542.56.

Purchase Order	Contractor
ITS17-46A	PC Specialists, Inc. dba Technology Integration Group of San Diego, CA
ITS17-46B	Helixstorm, LLC of Temecula, CA
ITS17-46C	Xceptional Networks of San Diego, CA
ITS17-46D	GovConnection, Inc. dba Connection Public Sector Solutions of Rockville, MD

BACKGROUND

Omnitrans utilizes host servers and backup storage devices to allow for multiple operating systems and applications to run on a single server. The physical host servers run VMware to cluster the hosting of critical applications such as SAP, Trapeze and TransitMaster. The VMware vSAN (virtual storage area network) licensing replaces a physical SAN. The virtualization of physical servers improves the efficiency through the reduction of maintenance and is 100 times faster than the current SAN.

On January 4, 2017, Omnitrans' Board of Directors authorized the release of Invitation for Bids IFB-ITS17-46 for the provision of Datacenter and Hardware Refresh. Notices were published in two local newspapers of general circulation, two minority papers, and posted on Omnitrans' online bidding system. Eleven bids were received by the January 26, 2017 deadline, including four bids from small and disadvantaged business enterprises and one local firm. All bids were deemed responsive.

Those bids that did not meet the technical specifications are identified as N/A in the bid matrix below. Low bidders for each category are highlighted.

COMPANY	SERVERS	BACKUP STORAGE	VMWARE VSAN	VMWARE TRAINING
PC Specialists, Inc. dba Technology Integration Group, San Diego, CA	\$205,496.39	No Bid	No Bid	No Bid
Helixstorm LLC Temecula, CA	No Bid	\$37,987.32	No Bid	No Bid
Xceptional Networks, Inc., San Diego, CA	No Bid	No Bid	\$42,842.00	\$26,982.00
GovConnection, Inc. dba Connection Public Sector Solutions Rockville, MD	\$268,637.56	\$51,126.75	\$67,874.00	\$24,348.00
Alpha Data Technologies, Inc. Los Angeles, CA	N/A	N/A	\$75,154.70	\$25,035.00
Hypertec USA, Inc. Tempe, AZ	N/A	N/A	\$75,419.50	\$28,404.00
Chandler Automated Systems, dba Vigilant Technologies Chandler, AZ	N/A	N/A	\$46,381.70	\$24,873.00
CherrystoneIT Huntington Beach, CA	\$295,847.86	\$75,433.70	No Bid	\$32,064.00
Nth Generation Computing San Diego, CA	N/A	No Bid	\$49,220.00	\$24,648.00
SIGMANet, Inc, Ontario, CA	\$229,102.67	\$102,281.09	\$75,308.40	\$26,235.00
Starnet Data Design Westlake Village, CA	\$244,572.70	No Bid	No Bid	No Bid

Sales tax, delivery and warranty included

Award is recommended to the lowest, responsive, responsible bidder in each category. The Independent Cost Estimate (ICE) of \$458,050 was based on retail pricing and did not consider government rates.

This procurement meets the requirements of Omnitrans' Procurement Policies and Procedures.

FUNDING SOURCE

The cost associated with this procurement is budgeted in Omnitrans' Capital budget as follows:

FUNDING	GRANT #	YEAR	PROJECT NAME	INTERNAL ORDER	AMOUNT
STAF	09-10-OMN-B	2009	Data Server Refresh	D0622006S	\$ 2,883.65
STAF	09-09-OMN-B	2009	Data Server Refresh	D0922004S	\$ 50,427.79
FTA	CA-90-Y850	2011	Data Server Refresh	D1122003F	\$ 42,525.21
STAF	11-03-OMN-B	2011	Data Server Refresh	D1122003S	\$ 5,062.29
FTA	CA-90-Y939	2012	Data Server Refresh	D1222006F	\$ 86,769.25
FTA	CA-90-Z009	2013	Data Server Refresh	D1322002F	\$ 13,414.81
Prop 1B	Prop 1B	2013	Data Server Refresh	D1322022B	\$ 7,000.00
FTA	CA-90-Z112	2014	Data Server Refresh	D1422030F	\$119,459.56
				Total	\$327,542.56

_____ Verification of Funding Sources and Availability of Funds.
(Verified and initialed by Finance)

Short Range Transit Plan/Strategic Initiative Supported – Strategic Initiative 5, Technology Optimization

CONCLUSION

By proceeding with this award, Omnitrans will have the ability to increase the speed and reliability of its critical applications.

PSG:JMS:CVM

ITEM # _____ F4

DATE: March 1, 2017

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE AWARD – PURCHASE ORDERS ITS17-60
NETWORK MONITORING SOFTWARE LICENSING**

FORM MOTION

Authorize the CEO/General Manager to award purchase orders to Oznet Systems, Inc. of Altadena, CA, for the provision of the Network Monitoring Software Licensing for three (3) years in the amount of \$63,684.84, and a ten percent contingency of \$6,368.48, for a total not-to-exceed amount of \$70,069.32.

BACKGROUND

Omnitrans utilizes network monitoring software to monitor its network devices. The monitoring software sends notifications to alert staff of devices not performing properly. Omnitrans seeks to renew current licensing for the network monitoring, and additional licenses to monitor devices, additional servers, sockets, IP addresses, and databases.

On January 4, 2017, Omnitrans' Board of Directors authorized the release of Invitation for Bids IFB-ITS17-60. Notices were published in two local newspapers of general circulation and posted on Omnitrans' online bidding system. During the solicitation process, the requirement for the help desk ticketing software license was removed. Four bids were received by the February 1, 2017 deadline and all were deemed responsive. Due to pricing errors, one firm withdrew its bid.

Bids are listed below from lowest to highest.

OzNet Systems, Inc. Altadena, CA	Nexxsol Corporation Walnut, CA	Chandler Automated Systems dba Vigilant Technologies Chandler, AZ
\$63,684.84	\$65,346.56	\$124,700.09

Award is recommended to the lowest, responsive, responsible bidder. The Independent Cost Estimate (ICE) of \$113,991 was based on estimated pricing offered directly from the developer and did not represent government pricing or discounts available from authorized distributors. Price is deemed to be fair and reasonable through competition.

This procurement meets the requirements of Omnitrans' Procurement Policies and Procedures.

FUNDING SOURCE

The cost associated with this procurement is budgeted in the IT Department's Operating budget as follows:

Department	1320
Expenditure Code	505170

_____ Verification of Funding Source and Availability of Funds
(Verified and initialed by Finance)

Short Range Transit Plan/Strategic Initiative Supported – Strategic Initiative 5, Technology Optimization.

CONCLUSION

By proceeding with this award, Omnitrans will have the ability to continue to monitor its networking systems and avoid system failures.

PSG:JMS:CVM

ITEM # F5

DATE: March 1, 2017

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE AWARD (BENCH) - CONTRACT MNT17-01K,
APPROVE AMENDMENT 1 TO CONTRACTS MNT17-01G AND
MNT17-01I, REBUILT PARTS AND SERVICES**

FORM MOTION

Authorize the CEO/General Manager to award Contract MNT17-01K to The Janek Corporation of Tuckerton, NJ, Amendment 1 to MNT17-01G with Complete Coach Works of Riverside, CA, and MNT17-01I with Kirk's Automotive, Inc. of Detroit Michigan, for the provision of Rebuilt Parts and Services, ending November 30, 2019, and the authority to exercise two (2) single year options tied to the Consumer Price Index (CPI) in an new aggregate amount not to exceed \$4,575,000, ending no later than November 30, 2021, should all options be exercised.

BACKGROUND

Omnitrans uses rebuilt components to extend the useful life of its buses and reduce costs for major components such as air compressors, alternators, charge air coolers, transmissions and many others.

On August 3, 2016, Omnitrans' Board of Directors authorized the release of Invitation for Bids IFB-MNT17-01 for the provision of Rebuilt Parts and Services. The solicitation produced eleven (11) bids and on November 2, 2016, the Board approved bench awards to ten low bidders. However, many of the parts produced no bids. As stated in the November 2, 2016 Board memo, staff would conduct market research to identify potential sources for the non-bid items and release a subsequent solicitation if vendors confirm availability and willingness to compete. Additional firms indicated that they were willing to bid these parts.

On December 6, 2016, Omnitrans posted IFB-MNT17-01R. Three bids were received and all were deemed responsive. Awards are made to the lowest responsive and responsible bidder for each part.

Option year pricing will be adjusted up or down annually in accordance with the CPI. Award is being made to the lowest responsive and responsible bidder for each part. When a rebuilt part or

service is not available from the lowest bidder, Omnitrans reserves the right to order from the next lowest bidder, on an as needed basis.

Complete Coach Works and Kirk's Automotive, Inc. were awarded Contracts MNT17-01G and MNT17-01I respectively. Amendment 1 adds parts to each contract as a result of this solicitation.

This procurement meets the requirements of Omnitrans' Procurement Policies and Procedures.

FUNDING SOURCE

The cost associated with this procurement is budgeted in the Maintenance Department's Operating budget as follows:

Department	1200
Expenditure Code	504010

_____ Verification of Funding Sources and Availability of Funds.
(Verified and initialed by Finance)

Short Range Transit Plan/Strategic Initiative Supported – This procurement supports Omnitrans' Short Range Transit Plan goal to expand, maintain and improve existing vehicles, facilities and passenger amenities.

CONCLUSION

By proceeding with this award, Omnitrans will have the ability to repair and maintain Omnitrans' fleet of buses.

PSG:JMS:CVM



CONTRACT AGREEMENT

between

CONTRACTOR
The Janek Corporation
PO Box 904
Tuckerton, NJ 08087

(hereinafter "CONTRACTOR")
Chris Apgar, VP
Telephone: (609-294-1884 x14
Email: capgar@ejanek.com

And

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

CONTRACT DOCUMENTS

CONTRACT NO. MNT17-01K

Rebuilt Parts and Services

Contract Amount: \$155,000

Omnitrans Project Manager:

Name: Rick Barone
Title: Materials Manager
Telephone: (909) 379-7204
Email:
rick.barone@omnitrans.org

Contract Administrator:

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



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ATTACHMENT A – SCOPE OF WORK

ATTACHMENT B – REGULATORY REQUIREMENTS

ATTACHMENT C - PRICING

ATTACHMENT D - FORMS

This Agreement is made and entered into as of this ____ day of _____, and between Omnitrans (hereinafter referred to as "OMNITRANS") and The Janek Corporation (hereinafter referred to as "CONTRACTOR").

RECITALS

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

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

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

1. SCOPE OF WORK

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

2. PERIOD OF PERFORMANCE

The term of this Agreement shall be from the date of execution of this Agreement and continue in effect through November 30, 2019, 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 December 1, 2019 through November 30, 2021, which period encompasses the Initial Term and the Option Year One and Option Year Two.

3. CONTRACT OPTIONS

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

4. COMPENSATION

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

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed One Hundred Fifty-Five Thousand Dollars (\$155,000), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

5. INVOICING AND PAYMENT

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

CONTRACTOR shall submit invoices in duplicate to:

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

Accountspayable@omnitrans.org

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

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

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

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

C. TITLE

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

6. AUDIT AND INSPECTION OF RECORDS

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

7. NOTIFICATION

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

To OMNITRANS:

To CONTRACTOR:

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

The Janek Corporation
PO Box 904
Tuckerton, NJ 08087
Attn: Chris Apgar
Vice President

8. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES

A. OMNITRANS' Project Manager

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

Project Manager: Rick Barone, Materials Manager.

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

B. Contractor's Key Personnel

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

<u>Name</u>	<u>Role</u>
Chris Apgar	All Services

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

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

9. DISPUTE RESOLUTION

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

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

10. TERMINATION FOR CONVENIENCE

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

11. TERMINATION FOR BREACH OF AGREEMENT

- A. If CONTRACTOR fails to perform any of the provisions of this Agreement or so fails to make progress as to endanger timely performance of this Agreement, OMNITRANS may give CONTRACTOR written notice of such default. If CONTRACTOR does not cure such default or provide a plan to cure such default which is acceptable to OMNITRANS within the time permitted by OMNITRANS, then OMNITRANS may terminate this Agreement due to CONTRACTOR's breach of this Agreement.
- B. If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then OMNITRANS may immediately terminate this Agreement.
- C. If CONTRACTOR violates Section 28, Compliance with Lobbying Policies, of this Agreement, then OMNITRANS may immediately terminate this Agreement.
- D. In the event OMNITRANS terminates this Agreement as provided in this Section, OMNITRANS may procure, upon such terms and in such manner as OMNITRANS may deem appropriate, Work similar in scope and level of effort to those so terminated, and CONTRACTOR shall be liable to OMNITRANS for all of its costs and damages, including, but not limited, any excess costs for such Work.
- E. All finished or unfinished documents and materials produced or procured under this Agreement shall become OMNITRANS' property upon date of such termination.
- F. If, after notice of termination of this Agreement under the provisions of this Section, it is determined for any reason that CONTRACTOR was not in default under the provisions of this Section, or that the default was

excusable under the terms of this Agreement, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 10, Termination for Convenience.

- G. The rights and remedies of OMNITRANS provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

12. ASSIGNMENT

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

13. SUBCONTRACTING

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

Subcontractor's Name and Address

Work to Be Performed

N/A

14. INDEPENDENT CONTRACTOR

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

15. INSURANCE

A. INSURANCE REQUIREMENTS

1) General Requirements for Contractor

- a. Without limiting or diminishing the Contractor's obligation to indemnify or hold Omnitrans harmless, Contractor shall procure, prior to commencement of the services required under this contract and maintain for the duration of the contract at its own expense, insurance of the kinds and in the amounts as indicated below;
- b. Provide Omnitrans with valid original certificates of insurance and endorsements showing Omnitrans as an additional insured.

2) Deductibles or Self-Insured Retention (SIR)

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

3) Other Insurance Provisions

a. Commercial General Liability and Automobile Liability

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

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

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

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

b. Workers' Compensation

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

c. Care, Custody, and Control

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

4) Acceptability of Insurers

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

5) Verification of Coverage

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

6) **Subcontractors**

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

7) **Notification of Terminated Insurance**

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

B. MINIMUM INSURANCE COVERAGE

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

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

- 10) ☐ All drivers making deliveries of products specified on this solicitation shall have Hazardous Materials Endorsements on their Commercial Drivers License, and such other Endorsements as may be required by relevant laws and/or regulations.

16. INDEMNITY

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

17. REVISIONS IN SCOPE OF WORK

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

18. RIGHTS IN TECHNICAL DATA

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

19. OWNERSHIP OF REPORTS AND DOCUMENTS

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

20. OWNERSHIP RIGHTS

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

21. WORK FOR HIRE

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

22. SUBMITTAL OF CLAIMS BY CONTRACTOR

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

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

23. EQUAL OPPORTUNITY

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

24. STANDARD OF PERFORMANCE

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

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

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

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

26. DISQUALIFYING POLITICAL CONTRIBUTIONS

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

27. COMPLIANCE WITH LAW

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

consideration. The parties, in good faith, shall review established rates and may adopt any mutually agreed new rates, which shall only be effective as agreed upon by the parties. Thorough documentation including all cost elements is required to support the Contractor's claim to any relief under this clause.

28. COMPLIANCE WITH LOBBYING POLICIES

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

29. PUBLIC RECORDS ACT

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

prosecuting or defending any action concerning the materials, and shall defend, indemnify and hold OMNITRANS harmless from all costs and expenses, including attorneys' fees, in connection with such action.

30. WAIVER/INVALIDITY

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

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

31. FORCE MAJEURE

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

32. CONFIDENTIALITY

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

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

A. OMNITRANS shall review and approve in writing all OMNITRANS related copy proposed to be used by CONTRACTOR for advertising or public relations purposes prior to publication. CONTRACTOR shall not allow OMNITRANS related copy to be published in its advertisements and public relations programs prior to receiving such approval. CONTRACTOR shall ensure that all published information is factual and that it does not in any way imply that OMNITRANS endorses CONTRACTOR's firm, service, and/or product.

B. CONTRACTOR shall refer all inquiries from the news media to OMNITRANS, and shall comply with the procedures of OMNITRANS'

Public Affairs staff regarding statements to the media relating to this Agreement or the Work.

- C. If CONTRACTOR receives a complaint from a citizen or the community, CONTRACTOR shall inform OMNITRANS as soon as possible and inform OMNITRANS of any action taken to alleviate the situation.
- D. The provisions of this Article shall survive the termination or expiration of this Agreement.

34. GOVERNING LAW

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

35. MODIFICATIONS TO AGREEMENT

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

36. LICENSING, PERMITS AND INSPECTION COSTS

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

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

37. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, and any and all of its Amendments, Appendices, Exhibits and Attachments; (2) provisions of IFB-MNT17-01R and any and all of its Addenda, Appendices, Exhibits and Attachments; and (3) CONTRACTOR's proposal dated December 20, 2016.

38. ENTIRE AGREEMENT

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

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

OMNITRANS

THE JANEK CORPORATION

P. Scott Graham
CEO/General Manager

Chris Apgar
Vice President

Date

Date

Federal Tax I.D. No. 22-3154320

DP 

CM 

ATTACHMENT A - SCOPE OF WORK
MNT17-01
REBUILT PARTS AND SERVICES

1. GENERAL

Contractor shall provide repair/rebuild services on transit bus parts on an as-needed basis. There is no guarantee of usage.

2. SUMMARY

- A. The components for repair/rebuild services include, but are not limited to, Destination Signs, Air Compressors, Alternators, Charge Air Coolers, Connecting Rods, Cylinder Heads, Crank Shafts, Differential Drive Head Assemblies, Radiators, Starters, Steering Gear Boxes, Surge Tanks, Brake Actuators, Condenser Motor, Diversion Pumps, and Transmission Coolers.
- B. Contractor shall pick up and return parts to the following location:

Omnitrans
1700 West 5th Street
San Bernardino, CA 92411
- C. Omnitrans will give a minimum of twenty-four (24) hour advance notice when an order is to be processed. The Contractor shall provide all service and product lead time in writing to Omnitrans prior to service.
- D. Freight will be free on board (FOB) destination.
- E. Contractor may rebuild Omnitrans' cores or provide "off the shelf" equal quality rebuilt parts and credit Omnitrans for the cores.
- F. Contractor shall provide a quote on all items to be rebuilt or repaired before proceeding. Contractor is responsible for all freight charges. Cores deemed beyond repair shall be disposed by Contractor.

3. MATERIAL/WORKMANSHIP

- A. All materials for repair/rebuild of parts shall be provided by Contractor unless specified otherwise.
- B. All parts for repair/rebuild must be new, unused and of first or Original Equipment Manufacturer (OEM) quality.
- C. Workmanship shall be at least equivalent to acceptable standards practiced within the heavy vehicle repair industry.

4. WARRANTY

All repaired/rebuilt parts shall be warranted to be free from defects for one (1) year beginning on the date of installation or acceptance, except as specified below. Contractor shall submit their written standard limited warranty guarantee(s) for Omnitrans' review upon request.

- A. The warranty shall start from the date the equipment is returned to service after the product is installed. Omnitrans' Warranty Coordinator shall show date of installation/acceptance or proof of purchase receipt to qualify for warranty coverage.
- B. Any supplier or manufacturer's standard limited warranty coverage greater than that specified above must also be extended to Omnitrans.

5. MINIMUM QUALIFICATION REQUIREMENTS

Contractor shall:

- A. Have specific expertise in General Automotive Repair, Medium-Heavy Equipment repair and Heavy Transmission Repair.
- B. Have no record of unsatisfactory performance as evidenced by complaints filed with the State of California Bureau of Automotive Repairs (BAR), Omnitrans or any related local agencies.

6. WRITTEN ESTIMATES

Prior to any repairs being performed, Contractor shall prepare a detailed and itemized written estimate. This report shall provide an estimate of the cost and time for recommended work. The estimate will list parts, labor (hours and rate) and any miscellaneous charges (with explanation) and tax.

End Scope of Work

Attachment: Fleet Description

Year	Make	Model	FLEET DESCRIPTION		Transmission
			Series	Engine	
2001	New Flyer	C40LF	SR-674	John Deere 8.1L	Allison B400R
2001	New Flyer	C40LF	SR-709	John Deere 8.1L	Allison B400R
2003	New Flyer	C40LF	SR-813	Cummins 8.3L	ZF Trans HP-690
2005	New Flyer	C40LF	SR-842	John Deere 8.1L	ZF Trans HP-690
2009	New Flyer	C40LF	SR-1337	Cummins 8.9 ISL G	Allison B400R
2011	New Flyer	C40LF	SR-1563	Cummins 8.9 ISL G	Allison B400R
2011	New Flyer	C40LF	SR-1564	Cummins 8.9 ISL G	Voith D864.5
2012	New Flyer	XN40	SR-1677	Cummins 8.9 ISL G	Voith D864.5
2014	New Flyer	XN40	SR-1820	Cummins 8.9 ISL G	Voith D864.5
2012	New Flyer	XN60	SR-1565	Cummins 8.9 ISL G	Allison B400R
2015	New Flyer	XN40	SR-1965	Cummins 8.9 ISL G	Allison B400R
2016	New Flyer	XN40	SR-2029	Cummins ISL G	Allison B400R

Attachment B

REGULATORY REQUIREMENT

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REGULATORY REQUIREMENTS

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

RR-01

ADMINISTRATIVE CODE *

A. Applicability

This Article applies to all contracts.

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

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

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

C. Campaign Contributions

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

RR-02

DISCRIMINATION *

A. **Applicability**

This Article applies to all contracts.

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

RR-03

WHISTLEBLOWER REQUIREMENTS *

A. **Applicability**

This Article applies to all contracts.

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

RR-04

PUBLIC RECORDS ACT *

A. **Applicability**

This Article applies to all contracts.

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

indemnify and hold Omnitrans harmless from all costs and expenses including attorney's fees in connection with any such action.

RR-05

ACCESS TO RECORDS *

A. Applicability

This Article applies to all federally funded contracts.

- B. Contractor agrees to provide Omnitrans, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or the FTA's authorized representatives, including any FTA Project Management Oversight Contractor, access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a) 1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- C. If this Contract is for a capital project or improvement (defined at 49 U.S.C. 5302(a) 1) and was entered in to through other than competitive bidding, the Contractor shall make records related to this Contract available to Omnitrans, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- D. Contractor shall permit any of the foregoing parties to reproduce without any cost by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- E. Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until Omnitrans, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

RR-06

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

A. Applicability

This Article applies to all federally funded contracts.

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

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

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

RR-07

ENERGY CONSERVATION REQUIREMENTS

A. Applicability

This Article applies to all federally funded contracts.

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

RR-08

CIVIL RIGHTS REQUIREMENTS *

A. Applicability

This Article applies to all federally funded contracts.

- B. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. §

12132, and Federal transit law at 49 U.S.C. § 5332, Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Contractor shall comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

C. Equal Employment Opportunity

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

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

This Article applies to all federally funded contracts.

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

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

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

This Article applies to all federally funded contracts.

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

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

RR-11

SUSPENSION AND DEBARMENT*

A. Applicability

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

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

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

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

RR-12

RECYCLED PRODUCTS

A. Applicability

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

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

Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

RR-13

CLEAN WATER AND CLEAN AIR REQUIREMENTS*

A. Applicability

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

B. CLEAN WATER REQUIREMENTS

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

C. CLEAN AIR

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

- 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-14

COMPLIANCE WITH FEDERAL LOBBYING POLICY *

A. Applicability

The following Article applies to federally funded contracts over \$100,000.

- B. The Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, requires that Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying," attached hereto as the certification entitled, "Certification of Compliance with Federal Lobbying Requirements." As set forth in the certifications, each tier of subcontractors shall certify to the tier above that it will

not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures shall be forwarded from tier to tier up to Omnitrans.

RR-15

BUY AMERICA *

A. Applicability

The following Article applies to federally funded rolling stock purchase and construction contracts over \$150,000 and to contracts over \$150,000 for materials & supplies for steel, iron, or manufactured products.

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

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

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

RR-16

CARGO PREFERENCE*

A. Applicability

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

B. USE OF UNITED STATES FLAG VESSELS

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

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

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

**RR-17
FLY AMERICA**

A. Applicability

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

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

**RR-18
CONTRACT WORK HOURS AND SAFETY STANDARDS ACT ***

A. Applicability

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

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

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

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DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26

Disadvantaged Business Enterprises

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

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

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

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

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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.

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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>

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TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS *

A. Applicability

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

B. General Transit Employee Protective Requirements

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

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

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

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

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

E. Indemnity

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

**RR-23
BONDING REQUIREMENTS**

Applicability to Contracts

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

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

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

Background and Application

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

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

Clause Language

Davis-Bacon and Copeland Anti-Kickback Acts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) **Withholding** - Omnitrans shall upon its own action or upon written request of an authorized

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

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

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

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the

contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Applicability to Contracts

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

Flow Down

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

Model Clause/Language

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

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

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

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

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

Applicability to Contracts

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

Flow Down

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

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

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

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

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

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

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

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

Applicability to Contracts

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

Flow Down

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

Model Clauses/Language

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

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

RR-28

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

Applicability to Contracts

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

Flow Down

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

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

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

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

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

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

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VETERANS PREFERENCE

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

END OF REGULATORY REQUIREMENTS

Attachment C - Pricing
The Janek Corporation
MNT17-01K

Item Num	Section	Item Code	Description	Unit	Unit Cost
23	DESTINATION SIGNS	220915	REBUILT POWER SUPPLY ;TWIN VISION RO	EA	\$300
25	DESTINATION SIGNS	220917	REBUILT POWER SUPPLY/SIDE SIGN SR1337	EA	\$300
27	DESTINATION SIGNS	220919	REBUILT NF SR1337-SR1564 REAR RUN SIGN	EA	\$550
31	DESTINATION SIGNS	220921	REBUILT CONTROLLER,MASTER (PCB MASTER MAIN)	EA	\$900
33	DESTINATION SIGNS	220923	REBUILT SIGN DRIVR ASSY,TV 485 AC/AC AMBER	EA	\$250
35	DESTINATION SIGNS	51193	REBUILT CONTROLLER ;NF,SIDE DEST. SIGN	EA	\$230
37	DESTINATION SIGNS	217662	REBUILT SIDE DEST. SIGN POWER SUPPLY BOARD	EA	\$425
39	DESTINATION SIGNS	217661	REBUILT SIDE DEST. SIGN FLIP DOT CONTROLLER	EA	\$340
41	DESTINATION SIGNS	220925	REBUILT BOARD ;TWIN VISION FR SIGN CONVERTER	EA	\$120
45	DESTINATION SIGNS	220927	REBUILT BOARD W/O SENSOR ;TV,LED(16X32)MODULE DISPLAY	EA	\$350
47	ELECTRICAL/HYDRAULIC	220901	REBUILT FAN ASSY,NF SR1337 FAN DRIVE MOTOR	EA	\$190
49	ELECTRICAL/HYDRAULIC	220903	REBUILT CONTROLLER,NF SR1337 RADIATOR CS20	EA	\$140
51	ELECTRICAL/HYDRAULIC	220905	REBUILT CONTROLLER,NF SR1337 C-20 FAN	EA	\$140
53	ELECTRICAL/HYDRAULIC	218201	REBUILT MODULE,NF VANSKO 1210	EA	\$300
55	ELECTRICAL/HYDRAULIC	220907	REBUILT VANSKO VMM1615 MODULE SR1677	EA	\$250
57	ELECTRICAL/HYDRAULIC	220909	REBUILT MODULE,NF,SR842 2820	EA	\$550
59	ELECTRICAL/HYDRAULIC	218445	REBUILT SELECTOR,NF VOITH TRANS SHIFT	EA	\$250
61	ELECTRICAL/HYDRAULIC	19547	REBUILT ODK; LUMINATOR	EA	\$470
63	ELECTRICAL/HYDRAULIC	47092	REBUILT BOX ;NF,THOMAS,TV OCU(ODK)	EA	\$470
65	ELECTRICAL/HYDRAULIC	45930	REBUILT STRIP ;NF R/H INDICATOR LED TELL TALE	EA	\$150
67	ELECTRICAL/HYDRAULIC	45948	REBUILT STRIP ;NF R/H INDICATOR LED TELL TALE	EA	\$150
71	ELECTRICAL/HYDRAULIC	217540	REBUILT CARRIER A/C RELAY	EA	\$400
73	ELECTRICAL/HYDRAULIC	217507	REBUILT LOGIC BOARD CARRIER	EA	\$375

Item Num	Section	Item Code	Description	Unit	Unit Cost
77	ELECTRICAL/HYDRAULIC	220937	REBUILT EQUALIZER ;NF SR585-SR813 BATTERY	EA	\$220
79	ELECTRICAL/HYDRAULIC	217518	REBUILT EQUALIZER, SR842-SR1965 80A BATTERY	EA	\$220
117	HVAC	220882	Rebuilt Air Conditioning Compressor, New Flyer Air Conditioning Compressor SR1965 X430	EA	\$1,400
118	HVAC	221281	Core for S/C 220882	EA	\$500
119	HVAC	217540	REBUILT CARRIER A/C RELAY	EA	\$400



MNT17-01K
REBUILT PARTS AND SERVICES


ATTACHMENT D

FORMS

SECRET

One (1) form required of each bidder/proposer

1. ☒ The bidder/proposer hereby certifies that it will comply with the requirements of Buy America and will ensure that the lower tier contractors and subcontractors will also comply with the requirements as referenced.
2. ☐ The bidder/proposer hereby certifies that it cannot comply with the requirements as referenced, but may qualify for an exception to the requirement consistent with 49 U.S.C. 5323(j)(2)(C), and the applicable regulations in 49 CFT 661.7. Explain below.
3. ☐ The bidder/proposer hereby certifies that submitted bid/proposal is \$150,000 or less, no certification is necessary.

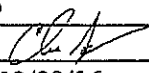
Company Name	Janek Corp	
Principal Office Address	PO Box 904	
City, ST, Zip	Tuckerton, NJ 08087	
Title of Person Authorized to Bind Firm	VP	
Print Name	Chris Apgar	
Date Signed and Authorized Signature		12/20/16

Exceptions as referenced in check box number 2:

[illegible][illegible][illegible]

**CURRENT CLIENT REFERENCES. MINIMUM OF FIVE (5) REQUIRED**

Submit this form with the BID/Proposal, with valid contact information, failure to do so is grounds for disqualification.

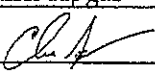
Company	Delaware Transit
Address	Dover, DE
City, ST, Zip	
Phone Numbers/Email	josex.colon@state.de.us
Contact Name/Title	Jose Colon
Type of Engagement	electronic repairs
Company	LYNX
Address	
City, ST, Zip	Orlando, FL
Phone Numbers/Email	dbosnak@golynx.com
Contact Name/Title	Dean Bosnak
Type of Engagement	electronic repairs
Company	SEPTA
Address	
City, ST, Zip	Philadelphia
Phone Numbers/Email	bvaders@septa.org
Contact Name/Title	
Type of Engagement	electronic repairs
Company	Cleveland RTA
Address	
City, ST, Zip	Cleveland
Phone Numbers/Email	gschreiner@gcrrta.org
Contact Name/Title	Greg Schreiner
Type of Engagement	electronic repairs
Company	LA MTA
Address	
City, ST, Zip	Los Angeles
Phone Numbers/Email	BONINOR@metro.net
Contact Name/Title	Richard Bonino
Type of Engagement	electronic repairs
Bidder's/Proposer's Company Name	Janek Corp
Legal Structure (corp./partner/proprietor)	corp
Principle Office Address	PO Box 904
City, ST, Zip	Tuckerton, NJ 08087
Phone Number and E-Mail	6092941884 capgar@ejanek.com
Federal Employer Identification Number	22-3154320
Title of Person Authorized to Sign	vp
Print Name of Person Authorized to Sign	
Date Signed and Authorized Signature	12/20/16



NOT ON EXCLUDED PARTIES LIST SYSTEM (REQUIRED)

Submit this form with the BID, failure to do so is grounds for disqualification.

The Bidder certifies that it is NOT on the Excluded Parties List System of ineligible firms for federally financed and assisted construction, materials, equipment contracts or services.

Bidder's Company Name	<u>Ianek Corp</u>
Legal Structure (corp./partner/proprietor)	<u>corp</u>
Principle Office Address	<u>Po Box 904</u>
City, ST, Zip	<u>Tuckerton, NJ</u>
Phone Number	<u>6092941884</u>
Fax Number	<u>6092942019</u>
E-Mail	<u>capgar@ejanek.com</u>
Federal Employer Identification Number	<u>22-3154320</u>
Title of Person Authorized to Sign	<u>vp</u>
Print Name of Person Authorized to Sign	<u>Chris Apgar</u>
Date Signed and Authorized Signature	<u> 12/20/16</u>

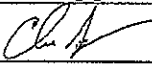


DECLARATION OF NON-COLLUSION (REQUIRED)

Submit this form with the BID, failure to do so is grounds for disqualification.

I hereby declare (or affirm) under penalty of perjury that:

1. I am the bidder (if the bidder is an individual), a partner in the bid (if the bidder is a partnership), or an officer or employee of the bidding corporation and have authority to sign on its behalf (if the bidder is a corporation);
2. The bidder has independently produced the attached bid(s) without collusion, agreement, understanding or planned common course of action, with any other source, that would limit independent bidding competition;
3. The contents of the bid(s) have not been communicated by the bidder and or its employees and or agents to any person not an employee and or agent of the bidder and or its surety, on any bond furnished with the bid, and will not be communicated to any such person prior to the official opening of the bid, and
4. I have fully informed myself regarding the accuracy of the statements made in this declaration.

Bidder's Company Name	Janek Corp
(corp./partnership/sole proprietor)	corp
Principle Office Address	Po Box 904
City, ST, Zip	Tuckerton, NJ
Phone Number	6092941884
Fax Number	6092942019
E-mail Number	capgar@ejanek.com
Federal Employer I.D. Number	22-3154320
Title of Person Authorized to Sign	vp
Print Name Authorized to Sign	Chris Apgar
Authorized Signature	
Date Signed	12/20/16



DEBARMENT, SUSPENSION, & OTHER RESPONSIBILITY MATTERS
(REQUIRED >\$25,000)

Submit this form with BID, failure to do so is grounds for disqualification.

One (1) form required of each bidder and subcontractor having greater than a \$25,000 share of the bid. U.S. Code, Title 31, § 6101 note and U.S. DOT regulations on "Debarment and Suspension," 49 C.F.R. Part 29.

The Participant (the bidder and potential contractor or potential subcontractor for a third party contract) certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal department or agency;
2. Have not within a three-year period preceding this bid been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application/bid had one or more public transactions (Federal, State, or local) terminated for cause or default.

An explanation must be attached to this certification regarding any exception(s).

The Primary Participant certifies that it has authority under State and local laws to comply with the subject assurances, the truthfulness and accuracy of the contents of this certification, any attached explanation submitted herewith, understands the applicability of 31 U.S.C. Sections 3801 *Et. Seq.* and that this certification has been legally made.

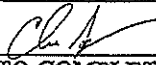
Bidder's Company Name	Janek Corp
Legal Structure (corp./partner/proprietor)	corp
Select One	<input checked="" type="checkbox"/> Prime or <input type="checkbox"/> Subcontractor (submit after award)
Principle Office Address	PO Box 904
City, ST, Zip	Tuckerton, NJ 08087
Phone Number	6092941884
Fax Number	6092942019
E-Mail	capgar@ejanek.com
Federal Employer Identification Number	22-3154320
Title of Person Authorized to Sign	vp
Print Name of Person Authorized to Sign	Chris Apgar
Date Signed and Authorized Signature	 12/20/16



LIST OF SUBCONTRACTORS AND DBES (REQUIRED $\geq \frac{1}{2}$ OF 1% SHARE OF BID)

Submit this form with the BID/Proposal, failure to do so is grounds for disqualification.

One (1) form required of each bidder and proposed subcontractor having greater than $\frac{1}{2}$ of 1% share of the bid. Government Code § 4100 on, "Subletting and Subcontract Fair Practices Act".

Company	NONE		
Address			
City, ST, Zip			
Phone Numbers/Email			
Contact Name/Title			
Type of Engagement			
Type of work to be performed			
Dollar value of participation	DBE qualified?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Company			
Address			
City, ST, Zip			
Phone Number			
Contact Name/Title			
Type of Engagement			
Type of work to be performed			
Dollar value of participation	DBE qualified?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Company			
Address			
City, ST, Zip			
Phone Number			
Contact Name/Title			
Type of Engagement			
Type of work to be performed			
Dollar value of participation	DBE qualified?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Total DBE participation	Dollars	% of Total Contract	
Bidder's/Proposer's Company Name	Janek Corp		
Legal Structure (corp./partner/proprietor)	corp		
Principle Office Address	PO Box 904		
City, ST, Zip	Tuckerton, NJ 08087		
Phone Number and E-Mail	6092941884 capgar@ejanek.com		
Federal Employer Identification Number	22-3154320		
Title of Person Authorized to Sign	vp		
Print Name of Person Authorized to Sign	Chris Apgar		
Date Signed and Authorized Signature	 12/20/16		

DUPLICATE THIS FORM AS NECESSARY TO COMPLETE LIST (SIGN LAST ONE)



PROPOSED DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

*This form must be submitted with the BID, to have it considered during BID evaluation.
The bidder intends to utilize the following DBE contractors on this project. Signature of participating
DBE is confirmation of willingness to participate on this project.*

Company	_____ none _____
Address	_____
City, ST, zip	_____
Phone Number	_____
Fax Number	_____
Contact Name	_____
Type of work to be performed	_____
Dollar value of participation	_____
Signature of participating DBE	
Company	_____
Address	_____
City, ST, zip	_____
Phone Number	_____
Fax Number	_____
Contact Name	_____
Type of work to be performed	_____
Dollar value of participation	_____
Signature of participating DBE	
Company	_____
Address	_____
City, ST, zip	_____
Phone Number	_____
Fax Number	_____
Contact Name	_____
Type of work to be performed	_____
Dollar value of participation	_____
Signature of participating DBE	
Company	_____
Address	_____
City, ST, zip	_____
Phone Number	_____
Fax Number	_____
Contact Name	_____
Type of work to be performed	_____
Dollar value of participation	_____
Signature of participating DBE	

(DUPLICATE THIS FORM AS REQUIRED)



RESTRICTIONS ON LOBBYING (REQUIRED >\$100,000)

Submit this form before final contract award, failure to do so is grounds for disqualification.

One form required of bidder and subcontractor having greater than a \$100,000 share of the bid. 31 U.S.C., § 1352 and U.S. DOT regulations on "New Restrictions on Lobbying," 49 C.F.R. Part 20.

Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operation Service Contract/Turnkey contracts.

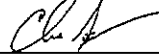
(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all tiers shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, as signed below, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Bidder's Company Name	Janek Corp
Legal Structure (corp./partner/proprietor)	corp
Select One	<input checked="" type="checkbox"/> Prime or <input type="checkbox"/> Subcontractor (submit after award)
Principle Office Address	PO Box 904
City, ST, Zip	Tuckerton, NJ 08087
Phone Number	6092941884
Fax Number	6092942019
E-Mail	capgar@ejanek.com
Federal Employer Identification Number	22-3154320
Title of Person Authorized to Sign	vp
Print Name of Person Authorized to Sign	Chris Apgar
Date Signed and Authorized Signature	12/20/16 



WARRANTY CLAIM PROCEDURE (REQUIRED)

Submit this form with the BID, failure to do so is grounds for disqualification.

Please provide an explanation of the Warranty Claim Procedure for exchange, replacement and reimbursement of repair costs. You may use the space below to explain or you may attach a copy of written procedures to this packet. Any attachment must be clearly marked as "Warranty Claim Procedure" to be considered responsive.

The Janek Corporation's warranty policy is three months from date of installation or one year from invoice date. Janek warrants to the purchaser that the products manufactured by Janek are free from defect in material and workmanship, and are of the kind and quality designated by the purchaser. The obligation of Janek to repair or replace any defective part or product shall be the exclusive remedy hereunder, and under no circumstances shall Janek be liable for any consequential damages. For service under warranty, please advise Janek promptly of all details. Products being returned to our facility should be sent prepaid. This warranty does not extend to products which have been subject to misuse, neglect, accident, improper installation or application nor shall it extend to products which have been repaired or altered by a vendor other than The Janek Corporation.

AMENDMENT 1
TO
CONTRACT MNT17-01G
BETWEEN
OMNITRANS
AND
COMPLETE COACH WORKS
Rebuilt Parts & Services

This Contract Amendment 1, effective _____ is entered into by and between Omnitrans (hereinafter called "Omnitrans") and Complete Coach Works, (hereinafter called "Contractor").

RECITALS

WHEREAS:

- I. Omnitrans and Contractor have entered into Contract MNT17-01 effective December 7, 2016; and
- II. Omnitrans and Contractor hereby agree to amend the Contract under Amendment 1 to add items.

NOW THEREFORE, OMNITRANS and CONTRACTOR hereby amend the Contract as follows:

- I. Attachment C, Pricing, delete in its entirety and replace with Attachment C, Pricing Revised 3/1/17.
- II. As hereby amended, the Contract remains in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Contract Amendment 1 to be executed on the date written above.

OMNITRANS

COMPLETE COACH WORKS

P. Scott Graham
CEO/General Manager

Dale E. Carson
President

Date

Date

DP 
CM 

ATTACHMENT C Pricing Revised 3/1/17

MNT17-01G

Complete Coach Works

Unit Price

Item Num	Section	Item Code	Description	Unit	Unit Price
169	ENGINE	38067	Rebuilt Cylinder Head, Cummins 8.3L Cylinder Head	EA	\$1,289.50
170	ENGINE	221244	Core for S/C 38067	EA	\$600.00
171	ENGINE	220113	Rebuilt Cylinder Head, Cummins 8.9L Cylinder Head	EA	\$1,289.50
172	ENGINE	221246	Core for S/C 220113	EA	\$600.00
173	ENGINE	217496	Rebuilt Cylinder Head, John Deere 8.1L Cylinder Head	EA	\$3,442.80
174	ENGINE	221248	Core for S/C 217496	EA	\$2,000.00
175	ENGINE	43042	Rebuilt Crankshaft, Cummins 8.3L Crankshaft w/gear	EA	\$382.50
176	ENGINE	221250	Core for S/C 43042	EA	\$600.00
177	ENGINE	220110	Rebuilt Crankshaft, Cummins 8.9L Crankshaft w/gear	EA	\$382.50
178	ENGINE	221252	Core for S/C 220110	EA	\$600.00
179	ENGINE	217881	Rebuilt Crankshaft, John Deere 8.9L Crankshaft w/gear	EA	\$382.50
180	ENGINE	221254	Core for S/C 217881	EA	\$850.00
197	HVAC	22129	Rebuilt Air Conditioning Compressor, New Flyer Air Conditionin	EA	\$1,480.00
198	HVAC	221272	Core for S/C 22129	EA	\$250.00
205	HVAC	220882	Rebuilt Air Conditioning Compressor, New Flyer Air Conditionin	EA	\$1,480.00
206	HVAC	221281	Core for S/C 220882	EA	\$250.00
211	STEERING/AXLE	218370	Rebuilt Differential, Drive Head Assembly, New Flyer SR842	EA	\$4,250.00
212	STEERING/AXLE	221287	Core for S/C 218370	EA	\$2,450.00
221	STEERING/AXLE	219196	Rebuilt Steering Gear Box, New Flyer SR813 (SJD51)	EA	\$942.60
222	STEERING/AXLE	221297	Core for S/C 219196	EA	\$300.00
223	STEERING/AXLE	217723	Rebuilt Steering Gear Box, New Flyer SR842 (PCL12)	EA	\$942.50
224	STEERING/AXLE	221299	Core for S/C 217723	EA	\$300.00
227	STEERING/AXLE	220133	Rebuilt Steering Gear Box, New Flyer SR1565-SR1820 (PMB31)	EA	\$942.50
228	STEERING/AXLE	221305	Core for S/C 220133	EA	\$300.00
229	STEERING/AXLE	220899	Rebuilt Steering Gear Box, New Flyer SR1965	EA	\$942.50
230	STEERING/AXLE	221307	Core for S/C 220899	EA	\$300.00
231	STEERING/AXLE	220352	Rebuilt Steering Gear Box, New Flyer SR1563-SR1564 (PPX11, PI	EA	\$942.50
232	STEERING/AXLE	221309	Core for S/C 220352	EA	\$300.00
233	STEERING/AXLE	220978	Rebuilt NF Axle Housing SR842	EA	\$1,250.00
234	STEERING/AXLE	221311	Core for S/C 220978	EA	\$1,200.00
235	TRANSMISSION	27763	Rebuilt Transmission Cooler, New Flyer/Allison Transmission Cc	EA	\$395.00
236	TRANSMISSION	221313	Core for S/C 27763	EA	\$100.00
	SHOP LABOR		Hourly Shop Labor Rate	Hour	\$95.00
111	HVAC	220876	Rebuilt Air Conditioning Compressor, New Flyer Air Conditioning Compressor SR1565	EA	\$4,308.35
113	HVAC	220878	Rebuilt Air Conditioning Compressor, New Flyer Air Conditioning Compressor SR1677	EA	\$2,652.13
117	HVAC	220882	Rebuilt Air Conditioning Compressor, New Flyer Air Conditioning Compressor SR1965 X430	EA	\$2,652.13
123	STEERING/AXLE	220117	Rebuilt Differential, Drive Head Assembly, New Flyer SR1337- SR1564	EA	\$6,473.35
125	STEERING/AXLE	220121	Rebuilt Differential, Drive Head Assembly, New Flyer SR1337- SR1564	EA	\$6,473.35
127	STEERING/AXLE	220897	Rebuilt Differential, Drive Head Assembly, New Flyer SR1820	EA	\$5,390.85

AMENDMENT 1
TO
CONTRACT MNT17-01I
BETWEEN
OMNITRANS
AND
KIRK'S AUTOMOTIVE, INC.
Rebuilt Parts & Services

This Contract Amendment 1, effective _____ is entered into by and between Omnitrans (hereinafter called "Omnitrans") and Kirk's Automotive, Inc. (hereinafter called "Contractor").

RECITALS

WHEREAS:

- I. Omnitrans and Contractor have entered into Contract MNT17-01I effective December 19, 2016; and
- II. Omnitrans and Contractor hereby agree to amend the Contract under Amendment 1 to add items.

NOW THEREFORE, OMNITRANS and CONTRACTOR hereby amend the Contract as follows:

- I. Attachment C, Pricing, delete in its entirety and replace with Attachment C, Pricing Revised 3/1/17.
- II. As hereby amended, the Contract remains in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Contract Amendment 1 to be executed on the date written above.

OMNITRANS

KIRK'S AUTOMOTIVE, INC.

P. Scott Graham
CEO/General Manager

Robert Kirkman
President

Date

Date

DP 

CM 

ATTACHMENT C - Pricing Revised 3/1/17

MNT17-01I

Kirk's Automotive

Unit Price

Item

Num	Section	Item Code	Description	Unit	Unit Price
117	ELECTRICAL/HYDRAULICS	26336	REBUILT PUMP DIVERISON SR585-842	EA	\$324.00
118	ELECTRICAL/HYDRAULICS	221192	Core for S/C 26336	EA	\$95.00
141	ELECTRICAL/HYDRAULICS	22020	REBUILT MOTOR ;NF CONDENSOR	EA	\$1,025.00
142	ELECTRICAL/HYDRAULICS	221216	Core for S/C 22020	EA	\$450.00
219	STEERING/AXLE	27490	Rebuilt Steering Gear Box, New Flyer SR585, SR654, SR674, SR709 (SFZ51)	EA	\$790.00
220	STEERING/AXLE	221295	Core for S/C 27490	EA	\$225.00
	SHOP LABOR		Hourly Shop Labor Rate	Hour	\$89.00
81	ELECTRICAL/HYDRAULICS	26336	REBUILT PUMP DIVERISON SR585-842	EA	\$364.00
82	ELECTRICAL/HYDRAULICS	221192	Core for S/C 26336	EA	\$195.00
105	ELECTRICAL/HYDRAULICS	22020	REBUILT MOTOR ;NF CONDENSOR	EA	\$1,125.00
106	ELECTRICAL/HYDRAULICS	221216	Core for S/C 22020	EA	\$500.00

ITEM # F6

DATE: March 1, 2017

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Haviva Shane, General Counsel

**SUBJECT: SPECIAL LEGISLATION TO CHANGE OMNITRANS FROM A JOINT
POWERS AUTHORITY TO A STATUTORILY CREATED SPECIAL
TRANSIT DISTRICT**

FORM MOTION

1. Provide direction to Omnitrans' staff and legal counsel regarding the desire to pursue legislation in this year of the current legislative cycle to form Omnitrans Transit District, a special transit district, which would take on the powers and obligations of the current joint powers authority;
2. Direct Omnitrans staff and legal counsel, if desired, to finalize an initial draft of the proposed legislation and to engage in the process of locating a bill author by mid-March 2017; and
3. Direct Omnitrans staff and legal counsel, if desired, to continue to work with the Executive Committee to finalize the proposed legislation and to bring back a proposed final draft prior to the September 2017 legislative deadline for bill amendments.

BACKGROUND

On February 3, 2017, at the regular meeting of the Omnitrans Executive Committee, the Committee conducted a review of the Omnitrans governance structure and risk mitigation options related to Omnitrans' new role as manager of the contract that will provide for the operations and maintenance of the Federal Railroad Administration – compliant hybrid vehicle rail service; the "Arrow".

Following this review, the Executive Committee determined that changing the structure of Omnitrans from a joint powers authority to a statutorily created entity would be the most effective means of eliminating potential tort liability to member entities of the Omnitrans joint powers authority. Based on the timing of the discussions, and the current 2017-2018 legislative cycle, it was determined that there was still sufficient time to obtain a spot bill by the February 17, 2017 deadline, and the Executive Committee directed staff and legal counsel to attempt to obtain a bill number.

Following a request from Syrus Devers, Best Best & Krieger's Director of Governmental Affairs, on behalf of Omnitrans, Assemblyman Steinorth's office agreed to put in the spot bill, AB 548, which was introduced on February 15, 2017. The Executive Committee held a special meeting on February 15 to discuss the spot bill, the desire to move forward with finding an author for the bill, and bringing the proposal to form Omnitrans as a special transit district to the full Board for approval.

The Executive Committee determined that it would be in the best interest of the member entities of Omnitrans to move forward with the process of creating Omnitrans as a special transit district under Division 10 of the Public Utilities Code, and directed staff to bring the matter to the full Omnitrans Board for consideration. It should be noted that there is no intention to change the number of entities; the composition of the Board will remain the same.

Draft legislation was previously prepared, several years ago, when the Omnitrans Board had considered forming Omnitrans as a special transit district. Staff and legal counsel have made some initial changes to the prior draft legislation, for use in initiating the process described in this report.

CONCLUSION

If directed by the Board, staff and legal counsel will move forward with pursuing a bill author, and will submit an initial version of the proposed legislation, in substantially the form attached, in order to meet the mid-March 2017 deadline. Thereafter, staff and legal counsel will work with the Executive Committee to finalize the proposed legislation. A final version of the legislation will be submitted to the Board for approval prior to the legislative deadline to submit amendments in September, 2017.

If the Board does not desire to move forward with a bill in this year of the current legislative cycle, the effort to form Omnitrans as a statutory entity can instead be initiated, at the State level, in January 2018.

PSG:HS

Attachment

The People of the State of California do enact as follows:

SECTION 1. Part 18 (commencing with Section 108000) is added to Division 10 of the Public Utilities Code, to read:

Comment [A1]: This numbering is tentative.

Part 17
Omnitrans Transit District

Chapter 1
General Provisions

§ 108000.

This part shall be known and may be cited as the Omnitrans Transit District Act.

§ 108001.

It is the intent of the Legislature in enacting this part to provide for a unified, comprehensive institutional structure for the ownership and governance of a transit system within the County of San Bernardino to develop, provide, operate, and administer public transportation. It is further the intent of the Legislature that the district established by this act may succeed to the powers, duties, obligations, liabilities, immunities, and exemptions of Omnitrans, a joint powers authority formed pursuant to the Joint Exercise of Powers Act (Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code), upon its dissolution. Because there is no general law under which such a district could be formed, the adoption of a special act and the formation of a special district is required.

Chapter 2
Definitions

§ 108010.

- (a) Unless the context otherwise requires, the provisions of this chapter govern the construction of this part.
- (b) “District” means the Omnitrans Transit District.
- (c) “Transit” and “transit service” means the transportation of passengers and their incidental baggage and parcels by any means.

(d) “Transit works” or “transit facilities” means any or all real and personal property, equipment, rights, facilities, title, or interests owned, or to be acquired, by the district for transit service or purposes for the operation thereof.

(e) “Board of directors,” “board,” and “directors,” means the board of directors of the district.

(f) “City” means, individually, the Cities of Chino, Chino Hills, Colton, Fontana, Grand Terrace, Highland, Loma Linda, Montclair, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Upland and Yucaipa, and any other city within the County of San Bernardino that joins as a member of the district as set forth in this part.

(g) “County” means, individually, the County of San Bernardino, and any other county which is annexed, in whole or in part, to the district as provided in this part.

(h) “Board of supervisors” means the County of San Bernardino board of supervisors.

(i) “Public agency” includes the State of California, and any county, city, district or other political subdivision or public entity of, or organized under the laws of, this state, or any department, instrumentality, or agency thereof.

(j) “System” means all transit works and transit facilities owned or held, or to be owned or held, by the district for transit purposes.

(k) “Revenues”, unless otherwise defined herein, means all rates, fares, tolls, rentals, fees, charges or other income and revenue actually received or receivable by, or for the account of, the district from the operation of the system, including, without limiting the generality of the foregoing, interest allowed on any moneys or securities any profits derived from the sale of any securities, any consideration in any way derived from any properties owned, operated, or at any time maintained by the district, and all local, State, federal grants and taxes received by the district.

(l) “Person” includes any individual, firm, partnership, association, corporation, limited liability company, trust, business trust, or the receiver or trustee or conservator for any thereof, but does not include a public agency, as defined in Section 108018.

(m) “Establish” includes establish, construct, complete, acquire, extend, or reroute. It does not, however, include the maintenance and operation of any existing system acquired by the district.

(n) “Voter” means any elector who is registered under the Elections Code.

(o) “Omnitrans JPA” means the joint powers authority formed pursuant to the Joint Exercise of Powers Act (Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the

Government Code) through that certain joint powers agreement titled “Amended and Restated Joint Powers Agreement between the County of San Bernardino and the Cities of Chino, Chino Hills, Colton, Fontana, Grand Terrace, Highland, Loma Linda, Montclair, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Upland, and Yucaipa Creating a County Wide Transportation Authority to be Known as ‘Omnitrans’”, dated July 1, 2016.

Chapter 3 Formation of District

§ 108030.

There is hereby created the Omnitrans Transit District, comprising the territory lying within the boundaries of the Cities of Chino, Chino Hills, Colton, Fontana, Grand Terrace, Highland, Loma Linda, Montclair, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Upland, Yucaipa, the unincorporated areas of San Bernardino County lying within census tracts: *****INSERT TRACT NOS.*****, as set forth in the 2010 decennial census maps for the State of California on file with the Bureau of the Census, Department of Commerce, Washington, D.C., and other cities that subsequently qualify as members pursuant to the requirements set forth in Section **108006**.

§ 108031.

Through compliance with the provisions for annexation set forth in Chapter 8 (commencing with Section **108580**), the territory of all or part of any other contiguous city or county may be included within the district.

§ 108032.

Any city within the County of San Bernardino, other than a city specifically listed in Section 108015 that is already included in the district at its formation, may join as a member of the district upon approval by its city council of a resolution approving the city’s joining as a member and a resolution of the district’s board approving the joining of the new member.

§ 108033.

(a) Upon the dissolution of Omnitrans JPA and without the necessity of any further action, the district shall succeed to any or all obligations, liabilities, indebtedness, bonded and otherwise, immunities, and exemptions of Omnitrans JPA and its board of directors.

(b) Upon the dissolution of Omnitrans JPA and without the necessity of any further action, the district shall assume the rights and obligations of Omnitrans JPA under any contract to which Omnitrans JPA is a party and which is to be performed, in whole or in part, on or after the date of dissolution of Omnitrans JPA.

(c) Upon the dissolution of Omnitrans JPA and without the necessity of any further action, all real and personal property owned by Omnitrans JPA shall be transferred to the district.

(d) On and after the date of dissolution of Omnitrans JPA, any reference in any provision of law or regulation to Omnitrans JPA shall be deemed to refer to the district.

Chapter 4 Government of District

§ 108040.

The district shall be governed by a board of directors. All powers, privileges, and duties vested in or imposed upon the district shall be exercised and performed by and through the board of directors provided, however, that the exercise of all executive, administrative, and ministerial power may be delegated and re-delegated by the board of directors to any of the offices, officers, or committees created pursuant to this chapter or created by the board of directors acting pursuant to this chapter.

§ 108041.

The board of directors shall consist of twenty (20) members as follows:

(a) The board shall be composed of one primary representative selected by the governing body of each city in the county and four (4) members of the San Bernardino County Board of Supervisors to serve until recalled by the governing body of the city or county. Each director shall be a mayor, councilperson, or supervisor of the governing body which selected him or her. Vacancies shall be filled in the same manner as originally selected.

(b) Each city and the county shall also select in the same manner as the primary or secondary representative, if applicable, one alternate to serve on the board when the primary representative is not available. Whenever the alternate director serves on the board, the alternate director shall have all the powers of a regular director.

(c) The board may allow for the appointment of advisory representatives to sit with the board but in no event shall said representatives be allowed a vote.

§ 108042.

The board, at its first meeting, and biannually thereafter at the first meeting in June, shall elect a chairperson who shall preside at all meetings, and a vice-chairperson who shall preside in his/her absence. The chairperson and the vice-chairperson shall serve two-year terms. Notwithstanding the foregoing, the vice-chairperson shall become chairperson for the subsequent two-year term in the absence of a vote by the board of directors to the contrary. In the event of their absence or inability to act, the member present, by an order entered in the minutes, shall select one of their members to act as chairperson *pro tem*, who, while so acting, shall have all the authority of the chairperson.

§ 108043.

The board of directors shall establish rules for its proceedings, including:

- (a) Adopt bylaws consistent with the laws of the state.
- (b) Adopt an annual budget.
- (c) Adopt a conflict-of-interest code.
- (d) Adopt priorities reflecting the district's goals.
- (e) Do any and all things necessary to carry out the purposes of this part.

§ 108044.

A majority of the board or of a standing committee entitled to vote constitutes a quorum for the transaction of business. All official acts of the board or a standing subcommittee of the board require the affirmative vote of a majority of the board or committee members present.

§ 108045.

The acts of the board of directors shall be expressed by motion, resolution or ordinance.

§ 108046.

All meetings of the board of directors shall be conducted in the manner prescribed by the Ralph M. Brown Act (Chapter 9 (commencing with § 54950), Part 1, Division 2, Title 5, of the Government Code).

§ 108047.

Each member of the board shall receive compensation, in an amount as determined by the board.

Chapter 5
Powers and Functions of District
Article 1
Corporate Power

§ 108050.

The district shall have and may exercise all rights and powers, expressed or implied, that are necessary to carry out the purposes and intent of this chapter, including, but not limited to, the power to do all of the following:

- (a) Sue and be sued.
- (b) (1) To acquire any property by any means, and to hold, manage, occupy, develop, jointly develop, dispose of, convey, or encumber property.
(2) To create a leasehold interest in property for the benefit of the district.
- (c) To acquire, by eminent domain, any property necessary to carry out any of its powers or functions.
- (d) To merge or split parcels, adjust boundary lines, or take similar actions as part of the acquisition of land or as needed in order to carry out its functions.
- (e) To construct, acquire, develop, jointly develop, maintain, operate, lease, and dispose of work, property, rights-of-way, and facilities.
- (f) To appoint necessary employees, and contract for professional services, and to define their qualifications and duties.
- (g) To enter into and perform all necessary contracts.
- (h) To adopt a seal and alter it at the district's pleasure.
- (i) To adopt an annual budget and to fix the compensation of its officers, board members, and employees.
- (j) To establish and enforce rules, fees, and regulations for the administration, operation, and maintenance of transit facilities, works and services.
- (k) To enter joint powers arrangements with other entities.
- (l) Appoint such advisory, standing, or ad hoc committees as it deems necessary.
- (m) To provide insurance.
- (n) To develop and pursue ballot measures and issue bonds.
- (o) To do any other things necessary to carry out the purposes of this chapter.

§ 108051.

All claims for money or damages against the district are governed by Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, except as provided herein, or by other statutes or regulations expressly applicable thereto.

§ 108052.

The district may fix, levy and collect, or cause to be collected, rates, tolls, rentals, fees, charges, taxes and assessments for any lawful purpose of the district, and as provided by law. The revenues obtained from any fares, tolls, rentals, fees, and charges may be in lieu of, or supplemental to, revenues obtained in any other manner and may be used for any district purpose and the payment of any district obligation.

§ 108053.

The district may exercise and all powers granted by any other law that, by its terms, is applicable to transit districts generally, to public agencies, local agencies, special districts, public corporations and public districts generally, or to any classification of districts or public agencies or local agencies or special districts or public corporations or public districts that include a district of the type provided for in this part, but the district shall not exercise any power contrary to an express provision of this part. The district has the power generally to perform all acts necessary or convenient to carry out fully the provisions of this part and to accomplish the purposes for which it was formed.

§ 108054.

The district shall be excluded from the requirements of a “local agency” set forth in § 53091 of the Government Code.

Article 2 Contracts

§ 108060.

The district may make contracts and enter into stipulations of any nature whatsoever, employ labor, and do all acts necessary and convenient for the full exercise of the powers granted in this part.

§ 108061.

The district may contract with any department or agency of the United States of America, with any public agency or with any person upon such terms and conditions as determined to be in the best interest of the district.

§ 108062.

(a) The Legislature finds and declares that there is a compelling interest in ensuring that all federal, state, local, and private funds available to the district are captured and used in a timely manner. In order to maximize the use of federal, state, local, and private funds and to maintain a competitive posture in seeking supplemental federal funds, the district shall have the authority to establish and use a flexible contracting process to maximize efficient use of public

funds.

(b) The district shall have the following powers with regard to contracting:

(1) The district may make contracts and enter into stipulations of any nature whatsoever, either in connection with eminent domain proceedings or otherwise, including, without limiting the generality of the foregoing, contracts and stipulations to indemnify and hold harmless, and to do all acts necessary for, incidental to, or convenient for the full exercise of the powers granted in this chapter.

(2) Notwithstanding any other provisions of this chapter, the district is authorized to use any procurement method authorized for state or local agencies by state or federal law, including, but not limited to, use of a competitive negotiation process in accordance with the provisions of Article 7.5 (commencing with Section 20216) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code. The district shall maintain acquisition and contracting guidelines to be followed by the district with respect to procurement of goods and services. These guidelines may be in the form of standard formats or model formats.

§ 108063.

All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, workers' compensation, and other benefits that apply to the activity of officers, agents, or employees of a public agency when performing their respective functions shall apply to employees of the district.

§ 108064.

The district may insure against any accident or destruction of the system or any part thereof. The district may insure against loss of revenues from any cause whatsoever. It may provide, in the proceedings authorizing the issuance of any bonds, for the carrying of insurance in such amount and of such character as may be specified, and for the payment of the premiums thereon. The district may also provide insurance as provided in Part 6 (commencing with Section 989), Division 3.6, Title 1 of the Government Code.

§ 108065.

The district may contract for the services of independent contractors.

Article 3 Property

§ 108070.

The district may take by grant, purchase, devise, or lease, or condemn in proceedings under eminent domain, or otherwise acquire, and hold and enjoy, real and personal property of every kind within or without the district necessary to the full or convenient exercise of its powers. The board may lease, mortgage, sell, or otherwise dispose of any real or personal property within or without the district necessary to the full or convenient exercise of its powers.

§ 108071.

The district may exercise the right of eminent domain to take any property necessary or convenient to the exercise of the powers granted in this act.

§ 108072.

The district is entitled to the benefit of any reservation or grant, in all cases, where any right has been reserved or granted to any public agency to construct or maintain roads, highway or other crossings over any public or private lands.

Article 4 Transit Facilities and Services

§ 108080.

The district may provide transit service for the transportation of passengers and their incidental baggage by any means.

§ 108081.

(a) The district may acquire, construct, own, operate, control, or use rights-of-way, rail lines, bus lines, stations, platforms, switches, yards, terminals, parking lots, and any and all facilities necessary or convenient for transit service, within and without the district, underground, upon, or above the ground and under, upon or over public streets or other public ways or waterways, together with all physical structures necessary or convenient for the access of persons or vehicles thereto, and may acquire any interest in or rights to use or joint use of any or all of the foregoing; however, installations in state freeways are subject to the approval of the Department of Transportation, and installations in other state highways are subject to Article 2 (commencing with Section 670) of Chapter 3 of Division 1 of the Streets and Highways Code. Installations in county highways and city streets are subject to similar encroachment permits.

(b) In addition to any power described in subdivision (a), the district may, to the extent that it is not expressly provided for in subdivision (a), develop, lease, jointly develop, or jointly use air

rights, land rights, development rights, rights-of-way, rail trackage, entrances and exits, and any and all fixed facilities and structures physically or functionally related to transit service.

§ 108082.

The district may lease or contract for the use of its transit facilities, or any portion thereof, to any operator, and may provide for subleases by the operator upon any terms and conditions it deems in the public interest. As used in this section, “operator” means any public agency or any person.

§ 108083.

The district may contract with any public agency or person to provide transit facilities and services for the district.

§ 108085.

The district may construct and operate or acquire and operate transit works and facilities in, under, upon, over, across, or along any state or public street or highway or any stream, bay or water course, or over any of the lands which are the property of the state, to the same extent that such rights and privileges appertaining thereto are granted to municipalities within the state.

§ 108086.

(a) The district may enter into agreements for the joint use of any property and rights by the district and any public agency or public utility operating transit facilities; may enter into agreements with any public agency or public utility operating any transit facilities, and wholly or partially within or without the district, for the joint use of any property of the district or of the public agency or public utility, or the establishment of through routes, joint fares, transfer of passengers or pooling arrangements.

(b) In addition to any power described in subdivision (a), the district may enter into agreements for the joint use or joint development of any property or rights by the district and any public agency, or public utility operating transit facilities or nontransit facilities, or both, or any other person, firm, corporation, association, organization, or other entity, public or private, either, in whole or in part, within or outside the district, for the joint use or development of any nontransit facilities of the district or of the public agency, public utility, person, firm, corporation, association, organization, or other entity, public or private, for the establishment of through routes, joint fares, transfer of passengers, pooling arrangements, station cost-sharing, connector fees, or land, air, or development rights, sales or leasing, necessary for, incidental to, or convenient for, the full exercise of the powers granted in this chapter. For the purpose of this section, the following terms have the following meanings:

(1) “Joint development” includes, but is not limited to, agreements with any person, firm, corporation, association, organization, or other entity, public or private, to develop or to engage in the planning, financing, construction, or operation of nontransit district facilities or development projects adjacent, or physically or functionally related, to district transit facilities.

(2) “Development project” includes, but is not limited to, projects for any use or mixed use including public, commercial, or residential uses.

(3) “Nontransit facilities,” includes, but is not limited to, any land, buildings, or equipment, or interest therein, that is used for the production of transit revenue not arising from the operation of a transit system.

§ 108087.

The rates, tolls, fees and charges for transit service furnished pursuant to this part shall be fixed by the board and shall be reasonable.

§ 108088.

The district may advocate on and act on behalf of all members with their concurrence to further the district’s transit interests, funding, projects, and priorities.

Article 5 Public Grants, Loans and Contributions

§ 108090.

The district may, without limitation by any other provisions of this part requiring approval of indebtedness, accept contributions of money, grants, loans, rights-of-way, labor, materials, and any other property from the state or the United States, or any department, instrumentality, or agency thereof, or from any public agency for the acquisition, construction, maintenance, and operation of rail transit facilities. The district may, without limitation by any other provisions of this part, enter into any contract and cooperate with and accept cooperation from the state or the United States, or any department, instrumentality, or agency thereof, or any public agency in the acquisition, construction, maintenance, and operation of, and in financing the acquisition, construction, maintenance, and operation of, any rail transit facilities. The district may do any and all things necessary in order to obtain the aid, assistance, and cooperation under any federal or state legislation now or hereafter enacted. Any evidence of indebtedness issued under this section shall constitute a negotiable instrument.

§ 108091.

The district may obtain temporary transfers of funds in accordance with the last paragraph of Section 6 of Article XVI of the California Constitution.

Article 6
Taxation

Comment [A2]: Note: This section requires further consideration to determine if we want to include some or all of it.

§ 108100.

The district may levy and collect, or cause to be collected, property taxes for any lawful purpose.

§ 108101.

The district shall not levy or collect a property tax unless two-thirds of the voters voting on the question at an election called for such purpose approves the levy of a property tax by the district.

§ 108102.

Each election shall be called and conducted by the district in the same manner as provided by law for the conduct of special elections by a county. The board may contract with the county, or delegate to the appropriate county officials the authority, to conduct the election on behalf of the district. The costs of any such election may be advanced to the district by any city or county prior to the time that the district has revenues of its own, to be repaid from subsequent district revenues.

§ 108103.

The ballot for the election shall contain such instructions as are required by law to be printed thereon.

§ 108104.

Comment [A3]: Subject to review.

Subject to the provisions of Section 108101, if from any cause the revenues of the district are, or are expected to be, inadequate in any year to pay the principal of, interest on, or sinking fund payments for general obligation bonds issued by the district pursuant to Chapter 4.5 (commencing with Section 53506) of Part 1 of Division 2 of Title 5 of the Government Code as they become due, or to establish or maintain any reserve fund therefor, the board may levy for district purposes and collect upon all property in the district taxable for district purposes as provided in this article, a tax sufficient, together with revenues already collected and available therefor, to pay the interest on the bonds that will become due and such part of the principal thereof, including any sinking fund installments required by any of the district's agreements with its bondholders, that will become due before the proceeds of a tax levied at the next general tax levy will be available for such purposes, and sufficient to provide or to restore such reserve fund to the amount required by any of the district's agreements with its bondholders.

§ 108105.

The board shall avail itself of the assessments made by the assessor of any county in which it operates and of the assessments made by the State Board of Equalization for the county and shall

take such assessments as the basis for district property taxation and have its property taxes collected by the tax collector of the county.

§ 108106.

The county auditor shall, on or before the third Monday in August of each year, transmit to the board a statement in writing showing the total value of all property within the county lying within an authorized taxing area of the district, ascertained from the assessments referred to in Section 107275.

§ 108107.

The board shall, on or before the first day of September, fix the rate or rates of taxes, designating the number of cents upon each one hundred dollars (\$100), and use as a basis the value of property transmitted to the board by the county auditor, which rate of taxation shall be sufficient to raise the amount previously fixed by the board.

§ 108108.

The board shall, immediately after fixing the rate or rates of taxes, transmit to the county auditor of each county in which the board has levied a tax, a statement of the rate of taxes fixed by the board.

§ 108109.

The district's taxes so levied shall be collected at the same time and in the same manner as county taxes. When collected, the net amount, ascertained as provided in this article, shall be paid to the treasurer of the district under the general requirements and penalties provided by law for the settlement of other taxes.

§ 108110.

Whenever any real property has been sold for taxes and has been redeemed, the money paid for redemption shall be apportioned and paid to the district by the county treasurer in the proportion which the tax due to the district bears to the total tax for which the property was sold.

§ 108111.

All taxes levied under this part are a lien on the property on which they are levied. The enforcement of the collection of such taxes shall be in the same manner and by the same means provided by law for the enforcement of liens for county taxes, all the provisions of law relating to the enforcement of the latter being made a part of this part so far as applicable.

§ 108112.

The county shall be compensated for services under this article at the rate of 1 percent for collecting the first twenty-five thousand dollars (\$25,000), and one-fourth of 1 percent for all sums over that amount.

§ 108113.

In lieu of, or in addition to, any taxes which may be levied by the district pursuant to this article, the legislative body or any city or county may enter into an agreement with the district to make annual contributions to the district from its general funds or from any other source of funds legally available to it for such purpose.

§ 108114.

A retail transactions and use tax ordinance may be adopted by the board in accordance with Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, if two-thirds of the electors, or such lesser percentage as permitted by law, voting on the measure vote to authorize its enactment at a special election called for that purpose by the board. The retail transactions and use tax ordinance shall provide for imposition of a tax in accordance with Sections 7261 and 7262 of the Revenue and Taxation Code.

§ 108115.

Any transactions and use tax ordinance adopted shall be operative on the first day of the first calendar quarter commencing not less than 180 days after adoption of the ordinance.

§ 108116.

The district may contract with the State Board of Equalization for its service in the preparations necessary to administer a transactions and use tax ordinance. The costs to be covered by the contract are to be for services of the types described in Section 7272 of the Revenue and Taxation Code for preparatory work up to the date of the adoption of the ordinance. Any dispute as to the amount of the costs shall be resolved in the same manner as provided in that section.

§ 108117.

Prior to the operative date of the transactions and use tax ordinance, the district shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of the ordinance.

§ 108118.

If the district shall not have contracted with the State Board of Equalization prior to the operative date of its transactions and use tax ordinance, it shall nevertheless so contract, and, in such case, the operative date shall be the first day of the first calendar quarter following the execution of the contract.

§ 108119.

Repeal of the transactions and use tax ordinance shall not be operative earlier than the first day of the first calendar quarter following the adoption of the ordinance of repeal.

§ 108120

Nothing in this chapter prohibits the district from availing itself of, or making use of, any procedure provided in this chapter or any other provision of law for the levy and collection of special taxes or special assessments of any type or character, and all proceedings may be carried on simultaneously or, in the alternative, as the district may determine.

Article 7 Investments and Deposits

§ 108200.

The district's investment of any surplus money in its treasury, including money in any sinking fund, shall be in accordance with Article 1 (commencing with Section 53600) of Chapter 4 of Part 1 of Division 2 of the Government Code.

§ 108201.

The district's deposit of district money shall be in accordance with Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of the Government Code.

Article 8 Transit Enforcement and Penalties

§ 108300.

A violation of any ordinance, rule, or regulation enacted by the board relating to the nonpayment of a fare in any transit facility owned or controlled by the district shall be an infraction punishable by a fine not exceeding seventy-five dollars (\$75), except that a violation by a person, after the second conviction under this section, shall be a misdemeanor punishable by a fine not exceeding five hundred dollars (\$500) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment.

Comment [A4]: Review fines.

§ 108301.

No person shall give, either orally or in writing, information to a public officer or employee engaged in the enforcement of this article if that person knows that the information is false. A violation of this section is an infraction punishable by a fine not to exceed seventy-five dollars (\$75), except that a violation by a person, after a second conviction of a violation of this section, shall be a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500) or by imprisonment in the county jail not to exceed six months, or by both the fine and imprisonment.

Comment [A5]: Review fines.

This section is in addition to, and does not supersede or limit, any and all other remedies, civil or criminal.

§ 108302.

A violation of any ordinance, rule, or regulation enacted by the board prohibiting unauthorized operation or manipulation of transit facilities owned or controlled by the board, or prohibiting unauthorized tampering or interference with, or loitering in or about, transit facilities owned or controlled by the board, is an infraction punishable by a fine not exceeding seventy-five dollars (\$75), except that a violation by a person, after the first conviction under this section, is a misdemeanor punishable by a fine not exceeding five hundred dollars (\$500) or by imprisonment in the county jail not exceeding six months, or by both that fine and imprisonment.

Comment [A6]: Review fines.

§ 108303.

A violation of any ordinance, rule, or regulation enacted by the board prohibiting the unauthorized entering into, climbing upon, holding onto or in any manner attaching oneself to vehicles operated upon exclusive public mass transit guideways owned or controlled by the board, is an infraction punishable by a fine not exceeding seventy-five dollars (\$75), except that a violation by a person, after the first conviction under this section, is a misdemeanor punishable by a fine not exceeding five hundred dollars (\$500) or by imprisonment in the county jail not exceeding six months, or by both that fine and imprisonment.

Chapter 6
Personnel
Article 1
Employee Relations

§ 108400.

Under review.

Article 2
Rights of Employees of Omnitrans

§ 108500.

When the district acquires existing facilities, rights and obligations of Omnitrans JPA, all of the employees of Omnitrans JPA shall be appointed to comparable positions by the district, without examination. These employees shall be given sick leave, seniority, vacation credits, and all other rights and obligations which they have with Omnitrans JPA, upon the transfer of Omnitrans JPA to district.

Article 3
Pension Plan

§ 108600.

Upon the commencement of operations of the district, the district shall contract with the Board of Administration of the Public Employees Retirement System to replicate the benefits which are provided to employees of Omnitrans JPA, on the date of transfer of the facilities from Omnitrans JPA to district.

§ 108601.

The contract between the Board of Administration of the Public Employees Retirement System and district shall also provide for the transfer of all vested benefits accumulated by employees of Omnitrans JPA to those employees, as they transfer from Omnitrans JPA to district.

§ 108602.

The district shall have the authority to participate in, contract with, or implement any retirement system or plan which complies with State and Federal law.

Article 4 Transit Police Force

§ 108700.

The district may establish and maintain a police force. Those employees of the district appointed by the Chief Executive Officer to the police force and who are duly sworn are peace officers, are subject to Section 830.33 of the Penal Code, in the event the district establishes a police force. The district shall comply with the standards for recruitment and training of peace officers established by the Commission on Peace Officer Standards and Training pursuant to Title 4 (commencing with Section 13500) of Part 4 of the Penal Code.

Chapter 7 Bonds and Other Evidence of Indebtedness Article 1

§ 108800.

The district may issue bonds, payable from revenue of any facility or enterprise to be acquired or constructed by the district, in the manner provided by the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code), and all of the provisions of that law are applicable to the district.

§108801.

(a) The district is a local agency within the meaning of the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the

Comment [A7]: We will need to check with our bond counsel before finalizing.

Government Code). The term "enterprise," as used in the Revenue Bond Law of 1941, for all purposes of this chapter, includes the transit system or any or all transit facilities and all additions, extensions, and improvements thereto authorized to be acquired, constructed, or completed by the district.

(b) The district may issue revenue bonds under the Revenue Bond Law of 1941 for any one or more transit facilities authorized to be acquired, constructed, or completed by the district or for transit equipment described in Section 125702 authorized to be acquired by the district or, in the alternative, the district may issue revenue bonds under the Revenue Bond Law of 1941 for the acquisition, construction, and completion of any one of those transit facilities or for transit equipment described in Section 125702 authorized to be acquired by the district.

§ 108802.

(a) The district may purchase transit equipment such as cars, trolley buses, motorbuses, light rail vehicles, or rolling equipment, and may execute agreements and leases to effect the purchase and leasing of transit equipment.

(b) Payment for transit equipment, or rentals therefor, may be made in installments.

§ 108803.

The agreement to purchase or lease transit equipment may direct the vendor or lessor to sell and assign or lease the transit equipment to a bank or trust company duly authorized to transact business in the state as trustee, and may direct the trustee to deliver the transit equipment to one or more designated officers of the district and may authorize the district to simultaneously therewith execute and deliver an installment purchase agreement or a lease of that equipment to the district.

§ 108804.

(a) The agreements and leases shall be duly acknowledged before a person authorized by law to take acknowledgments of deeds and in the form required for acknowledgment of deeds.

(b) The agreements and leases shall be authorized by resolution of the board and shall contain covenants, conditions, and provisions that may be deemed necessary or appropriate to insure the payment of the installment or lease payments from any legally available source or sources of funds as may be specified in the installment purchase agreement or lease.

§ 108805.

The covenants, conditions, and provisions of the agreements and leases may not conflict with any trust agreement or similar document securing the payment of bonds, notes, or certificates of the district.

§108806.

An executed copy of each agreement and lease shall be filed in the office of the Secretary of State, for a fee of one dollar (\$1) for each copy filed. The filing constitutes notice to any subsequent judgment creditor or any subsequent purchaser.

§108807.

The district is a local agency within the meaning of Section 53500 of Part 1 of Division 2 of Title 5 of the Government Code and may issue general obligation bonds, payable from property taxes levied by the District, in the manner provided in Article 4.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53506) of the Government Code, and all of the provisions of that law are applicable to the district.

§108808.

The Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code), the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code), and the Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000) of the Streets and Highways Code), are applicable to the district.

§108809.

The district shall be considered a "local agency," as defined in subdivision (h) of Section 53317 of the Government Code, and the provisions of Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code are applicable to the district.

§107510.

The district shall be considered to be a "local agency" as defined in subdivision (f) of Section 6585 of the Government Code, and Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code is applicable to the district.

§108810.

The district may borrow money in accordance with Article 7 (commencing with Section 53820), Article 7.6 (commencing with Section 53850), or Article 7.7 (commencing with Section 53859) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

§108811.

The provisions of Chapter 1 (commencing with Section 99000) of Part 11 of Division 10 of the Public Utilities Code are applicable to the district.

§108812.

(a) The district may borrow money in anticipation of the sale of bonds that have been authorized to be issued, but that have not been sold and delivered, and may issue negotiable bond

anticipation notes therefor, and may renew the bond anticipation notes from time to time, but the maximum maturity of any bond application notes, including the renewals thereof, may not exceed five years from the date of delivery of the original bond anticipation notes.

(b) The bond anticipation notes may be paid from any money of the district available therefor and not otherwise pledged. If not previously otherwise paid, the bond anticipation notes shall be paid from the proceeds of the next sale of the bonds of the district in anticipation of which they were issued. The bond anticipation notes may not be issued in any amount in excess of the aggregate amount of bonds that the district has not been authorized to issue, less the amount of any bonds of the authorized issue previously sold, and also less the amount of other bond anticipation notes therefor issued and then outstanding.

(c) The bond anticipation notes shall be issued and sold in the same manner as the bonds. The bond anticipation notes and the resolution or resolutions authorizing them may contain any provisions, conditions, or limitations that a resolution of the board of the district authorizing the issuance of bonds may contain.

§108813.

The district may issue negotiable promissory notes pursuant to this section to acquire funds for any district purposes. The maturity of the promissory notes may not be later than five years from the date thereof. Those notes shall bear interest at a rate not to exceed 12 percent per year. Those notes shall be payable from any source of revenue available to the district.

§108814.

The district may bring an action to determine the validity of any of its bonds, warrants, notes, or other evidences of indebtedness pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

§108815.

All bonds and other evidences of indebtedness issued by the district under this chapter, and the interest thereon, are free and exempt from all taxation within the state, except for transfer, franchise, inheritance, and estate taxes.

§108816.

(a) Notwithstanding any other provision of this chapter or of any other law, the provisions of all ordinances, resolutions, and other proceedings in the issuance by the district of any bonds, bonds with a pledge of revenues, bonds for any and all evidences of indebtedness or liability constitute a contract between the district and the holders of the bonds, notes, or evidences of indebtedness or liability, and the provisions thereof are enforceable against the district or any or all of its successors or assigns, by mandamus or any other appropriate suit, action, or proceeding in law or in equity in any court of competent jurisdiction.

(b) Nothing in this chapter or in any other law relieves the district or the territory included within it from any bonded or other debt or liability contracted by the district. Upon dissolution of the district or upon withdrawal of territory therefrom, that territory formerly included within the district, or withdrawn therefrom, shall continue to be liable for the payment of all bonded and other indebtedness or liabilities outstanding at the time of the dissolution or withdrawal as if the district had not been so dissolved or the territory withdrawn therefrom, and it shall be the duty of the successors or assigns to provide for the payment of the bonded and other indebtedness and liabilities.

(c) Except as may be otherwise provided in the proceedings for the authorization, issuance, and sale of any revenue bonds, bonds secured by a pledge of revenues, or bonds for improvement districts secured by a pledge of revenues, revenues of any kind or nature derived from any revenue-producing improvements, works, facilities, or property owned, operated, or controlled by the district shall be pledged, charged, assigned, and have a lien thereon for the payment of the bonds as long as they are outstanding, regardless of any change in ownership, operation, or control of the revenue-producing improvements, works, facilities, or property and it shall, in any later event or events, be the duty of the successors or assigns to continue to maintain and operate the revenue-producing improvements, works, facilities, or property as long as bonds are outstanding.

§108817.

Nothing in this chapter prohibits the district from availing itself of, or making use of, any procedure provided in this chapter or any other provision of law for the issuance of bonds or other forms of indebtedness of any type or character for any of the transit facilities authorized hereunder, and all proceedings may be carried on simultaneously or, in the alternative, as the district may determine.

Chapter 8 Changes of Organization or Reorganization

§ 108900.

(a) Territory within the district may be detached from the district by a supermajority vote of the directors, which shall be at least 80 percent of the nonweighted vote of the existing board provided that all pending legal and financial obligations have been satisfied.

(b) The detachment of territory from the district shall become effective upon giving of the notice required in Section 57204 of the Government Code, provided that the detached territory shall not be relieved from liability for taxation for the payment of any bonded indebtedness existing at the time of detachment.

(c) Notice of the detachment of territory from the district shall be given to each assessor whose roll is used for a tax levy made pursuant to this part and with the State Board of Equalization pursuant to Chapter 8 (commencing with Section 54900) of Part 1 of Division 2 of Title 5 of the Government Code.

Chapter 9
Dissolution

§ 108950.

If the district operates no transit facilities, the board may call an election at any time for the purpose of submitting to the voters of the district the question of whether the district shall be dissolved. Upon the filing with the secretary of the district of a petition signed by voters within the district equal in number to at least 25 percent of the total vote cast at the last general statewide election, asking that the question of dissolution of the district be submitted to the voters of the district, the board shall call the election.

§ 108951.

The election for the purpose of submitting to the voters of the district the question of whether or not the district shall be dissolved shall be held within 60 days following the date on which the petition is filed.

§ 108952.

Notice of any election for dissolution, whether called because of the filing of a petition or ordered by the board without petition, shall be published. The date fixed for the election shall not be less than 30 days from the date of the first publication of the notice.

§ 108953.

The ballots for the election shall contain substantially the instructions required to be printed on ballots for use at general state and county elections and, in addition, the following:

Shall the Omnitrans Transit District be dissolved?	Yes
	No

§ 108954.

The board shall canvass the vote. If a majority of the votes favor dissolution, the board shall by resolution dissolve the district.

§ 108955.

The board shall file a certified copy of the resolution with the Secretary of State and for record in the office of the county recorder of the County of San Bernardino and any other county in which territory of the district is situated.

AND/OR

§ 1089XX.

(a) The district may be dissolved upon a supermajority vote of the directors which shall be at least 80 percent of the nonweighted vote of the board. However, the winding up of the district shall be conducted by the board and the general manager. The district shall not be fully dissolved and terminated until all debts, financial obligations, and liabilities are paid in full and any and all remaining assets after payment of all debts, financial obligations, and liabilities are distributed to the members.

(b) (1) If the directors cannot agree as to the valuation of the property or to the manner of asset distribution, the question shall be submitted to arbitration, as set forth below, and the directors shall make the distribution or valuation as directed by arbitrators.

(2) Three arbitrators shall be appointed.

Comment [A8]: We can add language on how arbitrators will be selected.

(3) The arbitration shall be binding and shall be conducted pursuant to Title 9 (commencing with Section 1280) of the Code of Civil Procedure. Any hearings shall be held within the county. All notices, including notices under Section 1290.4 of the Code of Civil Procedure shall be given to the governing body of each member.

§ 108956.

Upon dissolution of the district, the right, title, and interest to any property owned or controlled by the district which was acquired by the district from Omnitrans JPA or the Cities of Chino, Chino Hills, Colton, Fontana, Grand Terrace, Highland, Loma Linda, Montclair, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Upland, Yucaipa, and the County of San Bernardino shall be returned to Omnitrans JPA or the Cities of Chino, Chino Hills, Colton, Fontana, Grand Terrace, Highland, Loma Linda, Montclair, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Upland, Yucaipa, and the County of San Bernardino or disposed of as designated by those parties. It is the intent of the Legislature that any remaining property continue to be held in public ownership. A joint powers agency, members of which may include the Cities of Chino, Chino Hills, Colton, Fontana, Grand Terrace, Highland, Loma Linda, Montclair, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Upland, Yucaipa, and the County of San Bernardino, may be formed to hold title to the remaining district property. If a joint powers agency cannot be formed, the district, in consultation with the Cities of Chino, Chino Hills, Colton, Fontana, Grand Terrace, Highland, Loma Linda, Montclair, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Upland, Yucaipa, and the County of San Bernardino, shall make a recommendation to the Legislature regarding an appropriate disposition of the property.

§ 108957.

The board shall wind up the affairs of the district.

ITEM # G1

DATE: March 1, 2017

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Maurice A. Mansion, Treasury Manager

**SUBJECT: PUBLIC HEARING, FEDERAL TRANSIT ADMINISTRATION
SECTION 5310 CAPITAL ASSISTANCE FOR FISCAL YEAR 2015-2017**

FORM MOTION

Close the public hearing concerning the Federal Transit Administration (FTA), Section 5310 Capital Assistance for Fiscal Year 2015-2017, held at 8:00 a.m., March 1, 2017, at the Omnitrans Metro Facility, 1700 West Fifth Street, San Bernardino, CA 92411.

SUMMARY

- The date and time was set for the federally required public hearing allowing comment on projects involving Federal assistance.
- A public hearing affords the opportunity to obtain views of officials and citizens regarding the proposed use of Federal assistance and community support for the amended program of projects.
- This public hearing allows public non-profit transportation providers to come forward if they are readily able to carry out the proposed services.
- This will certify to FTA, that there are no private non-profit organizations available to carry out the service described in the application submitted by Omnitrans for Fiscal Year 2015-2017.

BACKGROUND

In order to qualify for federal assistance through the Federal Transit Administration (FTA), Omnitrans is required to hold a public hearing on the proposed use of Federal funds. FTA also requires that Omnitrans give the public sufficient notice, that if a public non-profit is able to provide the same service, the funds will not be sought, that any comments be incorporated into the grant application and that the notice include language which indicates that in the absence of

substantive comments, the Federal assistance will be sought. Omnitrans is requesting \$1,060,000 in FTA Section 5310 capital funding to purchase ten (10) replacement paratransit vehicles and \$375,000 in Mobility Management Program funding and \$250,000 in operating assistance for Valley TREP (Travel Reimbursement Escort Program). Omnitrans is no longer pursuing the demand response software. This funding source is made available for the special transit needs of elderly persons and persons with disabilities. Funds are allocated based on a countywide competitive basis, and are available to fund up to 100% of the purchase price for vehicles and equipment. San Bernardino County Transit Authority (SBCTA) will determine which applicants receive funding.

Notification of award will occur by June 2017. If awarded, Omnitrans intends to use Section 5310 funding to purchase ten (10) replacement paratransit vehicles, mobility management program expenses and operating costs.

Public non-profit agencies listed in the Public and Specialized Transit Directory were contacted via e-mail and notified of the proposed hearing and service. Omnitrans intends to proceed unless one of the agencies comes forth at this hearing stating that they are able to provide the service.

ANALYSIS

In order for Omnitrans to qualify for Federal fund assistance and give the public an opportunity to comment, the Agency must hold a public hearing on the FTA Section 5310 capital assistance for Fiscal Year 2015-2017 before April 3, 2017. If no other agencies or individuals come forth at this hearing, Omnitrans is requesting to proceed with the application process. The Federal funds sought will allow Omnitrans to more efficiently and effectively provide public transportation services to elderly persons and persons with disabilities within the Agency's service area.

Attachments: Public Hearing Notice

PSG:MM

NOTICE OF PUBLIC HEARING

OMNITRANS, the regional mass transportation carrier in San Bernardino County, will hold a public hearing to obtain comments from citizens regarding the proposed grant application for capital assistance for Fiscal Year 2015-2017, which has been programmed for the following project:

Section 5310 Project Description	Total Cost	Federal Share
Ten (10) Replacement Paratransit Vehicles	\$1,060,000	\$1,060,000
Mobility Management Programs	\$375,000	\$300,000
Demand Response Software	\$250,000	\$200,000

Said public hearing will be in conjunction with the Omnitrans Board of Directors' meeting, as follows:

Wednesday, March 1, 2017 at 8:00 a.m
Omnitrans Metro Facility Board Room
1700 West Fifth Street
San Bernardino, California 92411

At this meeting, all interested persons or agencies will be afforded an opportunity to be heard. Any person or agency may mail comments to the address listed above until Wednesday, March 1, 2017 to the attention of the Finance Department. Detailed information may be obtained by writing to the Omnitrans Finance Department or by calling (909) 379-7169.

ENVIRONMENT

No adverse environmental impact is anticipated as a result of these projects.

IN THE ABSENCE OF ANY SUBSTANTIVE COMMENTS, THE PROPOSED GRANT APPLICATION FOR CAPITAL ASSISTANCE FOR FISCAL YEAR 2015-2017 WILL BECOME THE FINAL GRANT APPLICATION.

P. Scott Graham
CEO/General Manager

**Open Session
Item #H1**

**Adopt Proposed Changes to
Personnel Policy #402
Salary Ranges – Management
Confidential Classifications for
Non-Represented Employees**

**Material to be provided at the
Board Meeting.**