

Revised Agenda Item No. 13

Board of Directors Meeting

November 1, 2017

10:00 a.m.

Location

San Bernardino County Transportation Authority
Santa Fe Depot - First Floor Lobby – Board Room
1170 W. 3rd Street, San Bernardino, CA 92410

Consent Calendar

Transit

13. Cooperative Agreement with Omnitrans for West Valley Connector Project

That the Board, acting as the San Bernardino County Transportation Authority (SBCTA), approve Contract Number 17-1001638 with Omnitrans, memorializing the roles and responsibilities of each agency for the implementation of the West Valley Connector Project and providing for Omnitrans' contribution to reimburse SBCTA for the cost of the project, in an amount not-to-exceed **\$29,263,743**.

This item and the agreement have been updated to reflect a new dollar amount.

Minute Action

AGENDA ITEM: 13

Date: November 1, 2017

Subject:

Cooperative Agreement with Omnitrans for West Valley Connector Project

Recommendation:

That the Board, acting as the San Bernardino County Transportation Authority (SBCTA), approve Contract Number 17-1001638 with Omnitrans, memorializing the roles and responsibilities of each agency for the implementation of the West Valley Connector Project and providing for Omnitrans' contribution to reimburse SBCTA for the cost of the project, in an amount not-to-exceed **\$29,263,743**.

Background:

The West Valley Connector Project (WVC) is a Bus Rapid Transit (BRT) line located in the Cities of Pomona, Montclair, Ontario, Rancho Cucamonga, and Fontana, and consists of a hybrid of alignments identified in the 2010 Omnitrans sbX System Corridors plan. The purpose of the Project is to improve the speed and quality of public transit service in the western San Bernardino Valley. The San Bernardino County Transportation Authority (SBCTA) intends to construct the WVC, which will then be operated by Omnitrans as approved by both the SBCTA Board and Omnitrans Board in January 2017. Cooperative Agreement Contract No. 17-1001638 identifies the roles and responsibilities of each agency for execution of the West Valley Connector Project (WVC) Phase 1.

In accordance with the direction provided by the SBCTA Board in May 2017, Phase 1 consists of connecting the Pomona Metrolink Station on the Riverside Line to the Ontario International Airport via Holt Boulevard and the Rancho Cucamonga Metrolink Station on the San Bernardino Line via Milliken Avenue, terminating at Victoria Gardens on Day Creek Boulevard south of Main Street. Included in the Cooperative Agreement is a funding plan for the environmental, design, vehicle procurement, and construction of WVC Phase 1 consistent with the alignment and allocation of Measure I Valley Express Bus/Bus Rapid Transit Program funds approved by the SBCTA Board in May 2017. Fund sources identified for the project include Measure I Valley Express Bus/Bus Rapid Transit Program funds, revenue from the sale of the Omnitrans Mid-Valley Property, Federal Congestion Mitigation and Air Quality (CMAQ) funds previously assigned to Omnitrans for bus purchases, in-kind contributions, City of Ontario Measure I Valley Major Streets Arterial Program funds, and a prospective Federal Small Starts Capital Improvement Grant. Two build alternatives consisting of a full Rapid BRT without dedicated lanes and a partial Rapid BRT with some dedicated lanes along Holt Boulevard have been identified in the case the Small Starts Grant is not secured. In addition, SBCTA will continue to pursue other state and federal grant opportunities for the project as they arise. As identified in May 2017, the net increase to Omnitrans' annual operating costs associated with implementation

Entity: San Bernardino County Transportation Authority

of WVC Phase 1, for either alternative, is expected to be approximately \$1,820,000, funded with Measure I Valley Express Bus/Bus Rapid Transit Program funds.

SBCTA has the authority to allocate Federal Transit Administration (FTA) funds; however, it does not have the ability to receive funds directly from the FTA. Omnitrans is the direct FTA grantee for the San Bernardino Valley. As a result, SBCTA and Omnitrans have developed a successful direct recipient/sub-recipient working relationship to deliver projects with FTA funds. The current relationship allows the delivery of FTA-funded projects that meet FTA requirements without duplicating staff, assuring the best use of limited public funds available. Omnitrans and SBCTA executed Memorandum of Understanding (MOU) 15-1001289 in October 2015, setting forth the roles and responsibilities of the recipient/sub-recipient relationship. The MOU stipulates that project-specific sub-recipient agreements shall be executed, consistent with the parameters of the MOU and the specifics of the individual project. Contract No. 17-1001638 commits SBCTA, as Omnitrans' sub-recipient, to comply with all FTA regulations and requirements in the project implementation of the WVC that Omnitrans has committed to in order to receive any federal grant funds.

Financial Impact:

This item is consistent with the Fiscal Year 2017/2018 Budget.

Reviewed By:

This item was reviewed and unanimously recommended for approval by the Transit Committee on October 12, 2017. SBCTA General Counsel and Procurement Manager have reviewed this item and the agreement.

Responsible Staff:

Carrie Schindler, Director of Transit and Rail

Approved
Board of Directors
Date: November 1, 2017

Witnessed By:

Contract Summary Sheet
General Contract Information

Contract No: 17-1001638 Amendment No.: N/A Vendor No.: 01568
 Vendor/Customer Name: Omnitrans Sole Source? Yes No
 Description: Cooperative Agreement with Omnitrans for the West Valley Connector Project
 Start Date: 11/01/2017 Expiration Date: 04/30/2023 Revised Expiration Date: _____
 Has Contract Term Been Amended? No Yes - Please Explain _____
 List Any Related Contracts Nos.: MOU 15-1001289

Dollar Amount			
Original Contract	\$ 29,263,743.00	Original Contingency	\$ -
Revised Contract (Inclusive of Prior Amendments)	\$ -	Revised Contingency (Inclusive of Prior Amendments)	\$ -
Current Amendment	\$ -	Contingency Amendment	\$ -
TOTAL CONTRACT VALUE	\$ 29,263,743.00	TOTAL CONTINGENCY VALUE	\$ -
		TOTAL DOLLAR AUTHORITY (Contract Value and Contingency)	\$ 29,263,743.00

Contract Authorization

Executive Director Date: _____
 Executive Director Action: _____
 Board of Directors Date: 11/01/2017
 Board of Directors Action: _____

Contract Management: Payable/Miscellaneous

Invoice Warning: 20% Renewals: _____ Type: Capital PAA Other
 Retention: _____ % Maximum Retention: \$ _____
 Services: Construction Intrgrnt/MOU/COOP A & E Services Other Professional Services
 Disadvantaged Business Enterprise (DBE) Goal _____ %

Contract Management: Receivable

E-76 and/or CTC Date _____ (Attach Copy) Program Supplement No.: _____
 Finance Letter Reversion Date: _____ EA No.: _____

All of the above MUST be submitted to FINANCE including originals, amendments and miscellaneous transaction changes

Additional Information

Project Manager: Andres Ramirez
 See separate CSS for contract payable info.

CONTRACT NUMBER 17-1001638

BETWEEN

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

and

OMNITRANS

FOR

**ENVIRONMENTAL CLEARANCE, DESIGN, RIGHT-OF-WAY (ROW),
CONSTRUCTION, AND PROJECT CLOSEOUT PHASES FOR PHASE 1 OF THE
WEST VALLEY CONNECTOR PROJECT**

I. PARTIES AND TERM

- A. THIS COOPERATIVE AGREEMENT (“Agreement”) is made and entered into on _____, 2017, by and between the San Bernardino County Transportation Authority (“SBCTA”) and OMNITRANS (“OMNITRANS”). SBCTA and OMNITRANS may be referred to herein individually as a “Party” and collectively as the “Parties”.
- B. This Agreement shall terminate upon completion of SBCTA’s management of the environmental clearance, design, right-of-way (ROW), construction, and project closeout or December 31, 2024, whichever is earlier, except that the indemnification provisions of this Agreement shall remain in effect until terminated or modified, in writing, by mutual agreement of the Parties.

II. RECITALS

- A. WHEREAS, on January 4, 2017, the SBCTA Board of Directors directed staff to develop a Cooperative Agreement with OMNITRANS, designating SBCTA as the lead agency for Environmental Clearance, Design, Right-of-Way Acquisition, Construction, and Project Closeout work for the West Valley Connector (WVC) Project (PROJECT); and
- B. WHEREAS, on May 3, 2017, the SBCTA Board of Directors directed staff to proceed with a phased approach to deliver the PROJECT as depicted in ATTACHMENT E; and

- C. WHEREAS, the Parties desire to enter into this Agreement to define the roles and responsibilities of the Parties for the development and construction of the PROJECT; and
- D. WHEREAS, the PROJECT is located in Los Angeles and San Bernardino Counties and traverses the Cities of Pomona, Montclair, Ontario, Rancho Cucamonga, and Fontana; and
- E. WHEREAS, in November 2015, OMNITRANS entered into a contract with Parsons Transportation Group, Inc., for the Architectural, Engineering and Final Design Services for the PROJECT which was transferred to SBCTA through an Assignment, Assumption, and Amendment Agreement (AAA), SBCTA Contract Number 17-1001636, executed on August 16, 2017; and
- F. WHEREAS, the contract transferred to SBCTA through the AAA agreement does not include the Environmental Clearance, Design, or Construction Administration of the new vehicle maintenance facility; and
- G. WHEREAS, in the AAA, OMNITRANS assigned to SBCTA and SBCTA assumed all tasks not associated with the Active Transportation Program (ATP), and OMNITRANS remains responsible for administration of ATP-related tasks through a separate agreement between OMNITRANS and PARSONS. The ATP is scheduled to begin construction in 2018, ahead of the PROJECT; and
- H. WHEREAS, OMNITRANS will operate and maintain the WVC service resulting from implementation of the PROJECT; and
- I. WHEREAS, SBCTA is the lead agency responsible for the delivery of the PROJECT and the primary funding agency for the PROJECT; and
- J. WHEREAS, inclusion of the dedicated lanes along Holt Boulevard are dependent upon securing sufficient funding; and
- K. WHEREAS, OMNITRANS is the FTA grantee for the San Bernardino Valley and SBCTA will be a sub-recipient to OMNITRANS for receipt of FTA funds programmed and allocated to the PROJECT; and
- L. WHEREAS, the overall funding available for transit services in the San Bernardino Valley is fiscally constrained; and
- M. WHEREAS, one purpose of this AGREEMENT is to establish, as designated recipient of FTA funds, OMNITRANS' satisfactory continuing control over PROJECT Property (which consists of assets improved with FTA funds, including

sidewalk and curb ramps) and to establish the respective rights and obligations of the Parties in connection with this AGREEMENT as stated in Attachment F.

NOW, THEREFORE, for good and valuable consideration and the mutual promises contained herein, the Parties agree to the following:

III. RESPONSIBILITIES OF SBCTA

SBCTA agrees:

- A. To perform its Covenants and Responsibilities set forth in Article II of MOU 15-1001289 and all other obligations and covenants under MOU 15-1001289, the terms of which are incorporated herein by reference, in addition to the obligations and covenants outlined in this Agreement.
- B. To be lead agency and to diligently undertake Project Environmental Clearance, Design, Right-of-Way Acquisition, Construction, and Project Closeout work for the PROJECT, as further described in Attachment A and per the anticipated schedule shown in Attachment C, including the selection and retention of experienced and qualified consultants, with input and consultation from OMNITRANS, in accordance with all applicable procurement laws and policies. Performance of services under these consultant contracts shall be subject to the technical direction of SBCTA's Director of Transit and Rail, or her designee, with input and consultation from OMNITRANS.
- C. That SBCTA and/or its CONTRACTORS has or will have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work required to complete PROJECT. SBCTA and/or its CONTRACTORS shall keep in effect all such licenses, permits, and other approvals during the term of this Agreement.
- D. To maintain all books, papers, records, and accounting records, including but not limited to all direct and indirect costs allocated to the PROJECT, cost proposals with backup data, and all other material relating to the PROJECT. SBCTA shall, upon request, make all such materials available to OMNITRANS, any representative of FTA or the federal government or their designees, at any reasonable time during the term of the Agreement and continuing for three (3) years from the date of final payment to SBCTA for project expenses. Any contract entered into as a result of this Agreement shall contain all of the provisions of this paragraph.
- E. SBCTA and its contractor(s) will provide OMNITRANS the required signed Self-Certification Form by July 31 of each year, in accordance with FTA audit requirements.
- F. SBCTA will provide OMNITRANS a copy of its annual single audit for each fiscal year, in accordance with FTA audit requirements, if requested.

- G. To ensure all memoranda of understanding with local jurisdictions necessary for implementation and maintenance of PROJECT features are executed, in coordination with OMNITRANS' Designated Representative, including continuing control agreements to ensure FTA's continuing control over any property or assets paid for with FTA funds;
- H. To coordinate with the City of Ontario for first and second level reviews related to necessary property acquisitions, to provide all support documents for public hearings related to adoption of Resolutions of Necessity, and to conduct all such hearings, in the event efforts to acquire properties through voluntary acquisition are not successful.
- I. To provide all necessary ROW services to acquire right-of-way for the PROJECT through negotiated purchases of property, or if necessary, through eminent domain. Voluntary acquisitions may be acquired in the name of the jurisdiction in which the property lies.
- J. To contribute to the costs of PROJECT Management, Planning, Environmental, Design, ROW, Construction, and Project closeout phases of the PROJECT an amount not to exceed \$95,000,000.00, as shown in Attachment B. The costs of specific phases are provided in Attachment B, however, under no circumstance is the total combined SBCTA contribution to exceed \$95,000,000.00 without an amendment to this Agreement.
- K. To prepare and submit to OMNITRANS one electronic signed invoice for reimbursement of eligible PROJECT expenses, in order to be reimbursed by OMNITRANS. Invoices may be submitted to OMNITRANS as frequently as every month (to be turned in by the 15th of the month) according to the payment schedule described within Attachment B. The invoice submitted by SBCTA shall be signed by an authorized agent who can duly certify the accuracy of the included information. SBCTA shall not invoice OMNITRANS for an amount in excess of OMNITRANS' maximum obligation of ~~\$33,437,562.00~~\$32,785,969.00 (\$3,522,226.00 of which has already been spent). SBCTA shall electronically submit the invoice to OMNITRANS' Designated Representative. Each invoice shall include the following information:
- i. Agreement Number 17-1001638;
 - ii. The total of PROJECT expenditures shall specify the percent and amount of funds to be reimbursed, and include support documentation for all expenses invoiced in consideration of FTA audit requirements;
 - iii. Such other information as requested by OMNITRANS.
- L. To reimburse OMNITRANS for the actual allowable PROJECT management costs relative to the project. Invoices may be submitted to SBCTA as frequently as every month (by the 20th of the month) according to the payment schedule described within Attachment B.

- M. To establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (“GAAP”) to support SBCTA’s request for reimbursement, payment vouchers, or invoices which segregate and accumulate costs of PROJECT Management, Environmental, Design, ROW, Construction, Landscape Maintenance, and PROJECT closeout work elements, and to produce monthly reports which clearly and accurately identify reimbursable costs, matching fund costs, indirect cost allocation, and other allowable expenditures by SBCTA.
- N. To include designated representatives of OMNITRANS in Project Development Team (PDT) meetings and related communications on PROJECT progress, and to provide OMNITRANS copies of PDT meeting minutes and action items.
- O. To provide OMNITRANS adequate time to review and comment on the Environmental, Design, ROW, Construction, and closeout documents, including the operating and maintenance plan.
- P. To seek and consider input from OMNITRANS’ Designated Representative on PROJECT design features related to OMNITRANS’ operational needs and technology needs at critical points in the PROJECT development, such as the 65% and 90% design submittals, and during development of the operating and maintenance plan for PROJECT.
- Q. To provide to OMNITRANS a summary of all comments and responses on the 65%, 90%, and 100% design packages, including comments made by OMNITRANS, the five cities, and any other stakeholders.
- R. To extend an invitation to OMNITRANS’ Designated Representative to any meetings with stakeholders, the five cities through which the Project traverses, or the FTA, that involve critical design decisions that affect operation of the PROJECT.
- S. To work with OMNITRANS to ensure that the PROJECT design meets OMNITRANS’ operational needs.
- T. To cooperate with OMNITRANS to ensure that any technology specified for the PROJECT is compatible with OMNITRANS’ existing systems and/or will meet OMNITRANS’ technological needs.
- U. To provide to OMNITRANS any other reporting or documentation required by the FTA.
- V. To coordinate with OMNITRANS’ Designated Representative, if needed, for cross-promotion and coordination of public outreach and public information related to the PROJECT.
- W. To keep OMNITRANS’ designated staff representative apprised of any potential controversial issues that are likely to surface as public or elected official comments/communications, so the Parties can coordinate communications/responses.

- X. To plan for and assist in identifying operating and capital funding to pay for the additional service resulting from implementation of the PROJECT, including the proposed additional frequency (15 minute peak and 30 minute off-peak) on local Route 81 or any other increased local bus service agreed to as part of this PROJECT.
- Y. SBCTA shall comply with all applicable FTA grant funding requirements, including, but not limited to, all FTA requirements regarding bidding and contract administration. In addition, SBCTA shall ensure that the PROJECT activities are conducted in accordance with all applicable state, federal and local laws, rules and regulations, with all due diligence, and in a skillful and competent manner. SBCTA will ensure all PROJECT delivery is performed in compliance with FTA's Third Party Contracting Guidance, Circular 4220.1F, and all other applicable requirements as described in this Agreement.
- Z. If it is determined pursuant to an FTA audit that SBCTA has improperly expended any funds provided by OMNITRANS pursuant to this Agreement, SBCTA shall, at the direction of OMNITRANS, reimburse the full amount of such improperly expended funds to FTA or OMNITRANS within thirty (30) days of OMNITRANS' written notice.

IV. RESPONSIBILITIES OF OMNITRANS

OMNITRANS agrees:

- A. To continue to perform its Responsibilities and Covenants set forth in Article III of MOU 15-1001289 and all other obligations and covenants under MOU 15-1001289, the terms of which are incorporated herein by reference, in addition to the obligations and covenants outlined in this Agreement.
- B. As the FTA grantee, to submit FTA grant applications, mutually agreed upon with SBCTA, for PROJECT implementation needs, and to pass through to SBCTA any FTA grant funds awarded for the PROJECT.
- C. To sign all documents related to any grant application and award, upon receipt of assurances from SBCTA as OMNITRANS may reasonably require.
- D. To contribute to the PROJECT an estimated amount of ~~\$33,437,562.00~~\$32,785,969.00 (\$3,522,226.00 of which has already been spent) toward the Environmental, Design, ROW, Construction, and Project closeout phases of the PROJECT cost and Project Management of PROJECT, as shown in Attachment B. The costs of specific phases are provided in Attachment B; however, under no circumstances is the total combined OMNITRANS contribution to exceed ~~\$33,437,562.00~~\$32,785,969.00 without an amendment to this Agreement.
- E. To reimburse SBCTA in the first full week of the month, if SBCTA has submitted its invoice by the 15th of the preceding month, covering those actual allowable PROJECT expenditures and management costs incurred by SBCTA. Invoices may be

submitted to OMNITRANS as frequently as every month (by the 15th of the month) according to the payment schedule described within Attachment B.

F. In order for OMNITRANS to be reimbursed for OMNITRANS' project management costs relative to PROJECT, OMNITRANS agrees:

- i. To prepare and submit to SBCTA a monthly invoice, by the 20th of each month, with supporting documentation. OMNITRANS' invoice shall include allowable PROJECT costs incurred and paid for by OMNITRANS. The invoice submitted by OMNITRANS shall be signed by an authorized agent who can duly certify the accuracy of the included information.
- ii. The invoice shall be submitted on OMNITRANS' letterhead.
- iii. The invoice shall be submitted by OMNITRANS, in duplicate, to SBCTA's Accounts Payable department. OMNITRANS shall consult with SBCTA's Project Manager about questions regarding non-reimbursable expenses. Each invoice shall include the following information:
 1. Agreement Number 17-1001638;
 2. The total of PROJECT expenditures shall be itemized and include supporting documentation for all expenses invoiced;
 3. Such other information as requested by SBCTA;
 4. That total payments shall not exceed the maximum obligation for OMNITRANS project management costs estimated at \$1,125,544.00 (which includes \$111,530.00 already spent) as identified in Attachment B.

G. To designate a responsible staff member (Designated Representative) in coordinating the involvement of OMNITRANS' departments, attending the PDT meetings, receiving day-to-day communication, and reviewing the PROJECT documents. The OMNITRANS Designated Representative shall:

- i. Provide input on scopes of work for consultants and sit on consultant selection panels;
- ii. Provide OMNITRANS' input and concurrence on the operating and maintenance plan;
- iii. Provide OMNITRANS' input and concurrence on proposed technology for PROJECT;
- iv. Coordinate with SBCTA staff and city staff to execute the required local jurisdiction memorandums of understanding for implementation and maintenance of PROJECT features;
- v. Review and comment on draft and final design plan submittals within twenty-one (21) working days of receipt of the same from SBCTA;

- vi. Provide SBCTA any requested data or information relevant to PROJECT, as quickly as feasible;
 - vii. Provide SBCTA any reasonably requested information relevant to PROJECT regarding planned local bus route operating scenarios;
 - viii. Keep SBCTA's designated staff and consultant representative(s) apprised of any communications with outside stakeholders about the PROJECT, particularly related to any potential controversy or points of conflict related to the PROJECT;
 - ix. Assist SBCTA in actively seeking funding sources for the PROJECT;
 - x. Submit applications for funding sources as the applicant agency if SBCTA is not an eligible applicant for the particular funding source, provided SBCTA timely provides the information needed for the grant application and OMNITRANS concurs with the grant terms; and
 - xi. As the funding recipient/applicant, support SBCTA in reporting to FTA or other funding agencies.
- H. OMNITRANS' Designated Representative is authorized to act on behalf of OMNITRANS for purposes of implementing this Agreement.
- I. Coordinate with SBCTA staff as appropriate to resolve PROJECT matters that arise from any City comments or complaints if required.
- J. To participate in pre-bid, pre-construction, and construction meetings, service startup and system testing procedures, commissioning, punchlist job walks, acceptance procedures, etc., for the PROJECT.
- K. To provide adequate operators, maintenance personnel, and resources necessary to support the punchlist, startup, testing, and commissioning of the PROJECT.
- L. To own and maintain the vehicles, maintenance facility, and station amenities that will be purchased or constructed as part of the PROJECT.
- M. To implement the proposed additional frequency (15 minute peak and 30 minute off-peak) service along existing Route 81 in the City of Rancho Cucamonga between Ontario Mills and Chaffey College at such a time agreed to with SBCTA, contingent on available funding for this level of service.
- N. To provide accurate operating cost estimates (to the best of OMNITRANS' knowledge at the time based on information provided by Parsons Transportation Group, Inc. under the contract assumed by SBCTA pursuant to the AAA agreement) to ensure services to be implemented are within the long-term fiscally constrained revenue projections.
- O. OMNITRANS shall comply with all requirements of the FTA Master Agreement, including submission to the FTA, on a quarterly basis, of reports that document the

status of the PROJECT implementation progress, including task completion status and budget status, provided that SBCTA has timely submitted such information to OMNITRANS as required under this Agreement.

- P. To accept title to properties lawfully acquired and necessary for the completion of the PROJECT and identified in approved PROJECT documents as being turned over to Omnitrans upon: (i) close of escrow for voluntary purchases, or (ii) within thirty (30) days of presentation of quitclaim deeds for property acquired by SBCTA through eminent domain.

V. MUTUAL RESPONSIBILITIES

The Parties agree:

- A. To abide by all applicable Federal, State and Local laws and regulations pertaining to the PROJECT, and policies in the applicable program in the Measure I 2010-2040 Strategic Plan in effect as of the Effective Date.
- B. Eligible PROJECT reimbursements shall include only those costs shown within Attachment B and shall be paid in accordance with the Payment Schedule set forth in Attachment B for PROJECT-specific work activities that are described in this Agreement, and shall not include escalation or interest.
- C. Any changes to planned operating costs or operating scenarios affecting operating cost (frequency, span of service, length of route, travel time, number of vehicles, etc.) must be agreed to by both agencies, and any increased allocation to be funded under this Agreement must be approved by the SBCTA Board of Directors.
- D. All eligible and approved costs incurred during each phase of the PROJECT, as required to complete said phase, shall be reimbursed through the funding identified. In addition, should some unforeseen circumstance beyond the control of the Parties occur, such as a loss in PROJECT funding during any phase of the PROJECT, then either Party may give written notice of its intent to cancel its funding commitment through an amendment or termination of the Agreement, and all eligible costs to date will be reimbursed through the available funds identified for the PROJECT. In the event of such a loss of funding, OMNITRANS shall authorize full payment to the SBCTA for all services performed which have been previously approved and actually incurred by SBCTA at the time of termination, which amount shall not exceed the reasonable value of the work completed. In ascertaining the services actually rendered hereunder up to the date of termination of this Agreement, consideration shall be given to both completed work and work in process of completion.
- E. Neither SBCTA nor any officer, director, employee or agent thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by OMNITRANS under or in connection with any work, authority or jurisdiction delegated to OMNITRANS under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, OMNITRANS shall fully defend, indemnify and save harmless SBCTA, its officers, directors, employees

or agents from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by OMNITRANS under or in connection with any work, authority or jurisdiction delegated to OMNITRANS under this Agreement.

- F. Neither OMNITRANS nor any officer, director, employee or agent thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by SBCTA and under or in connection with any work, authority or jurisdiction delegated to SBCTA under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, SBCTA shall fully defend, indemnify and save harmless OMNITRANS, its officers, directors, employees or agents from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by SBCTA, its consultants, contractors or agents under or in connection with any work, authority or jurisdiction delegated to SBCTA under this Agreement.
- G. The Recitals to this Agreement are true and correct and are incorporated into this Agreement.
- H. All signatories hereto warrant that they are duly authorized to execute this Agreement on behalf of said Party and that by executing this Agreement, the Parties hereto are formally bound to this Agreement.
- I. This Agreement shall be governed by and construed in accordance with the laws of the State of California. All Parties agree to follow and keep apprised of all applicable local, state, county and federal laws and ordinances with respect to performance under this Agreement.
- J. The Parties agree that each Party and any authorized representative, designated in writing by the respective Party, upon reasonable notice, shall have the right during normal business hours to examine all Parties' financial books and records with respect to this Agreement. The Parties agree to retain their books and records for a period of five (5) years from the later of a) the date on which this Agreement terminates, or b) PROJECT completion, whichever occurs first.
- K. If any clause or provision of this Agreement is illegal, invalid or unenforceable under applicable present or future laws, then it is the intention of the Parties that the remainder of this Agreement shall not be affected but shall remain in full force and effect.
- L. This Agreement cannot be amended or modified in any way except in writing, signed by all Parties hereto.
- M. Due to the specific nature of the responsibilities and obligations of the Parties under this Agreement, neither this Agreement, nor any of the Parties' rights, obligations, duties, or authority hereunder may be assigned in whole or in part by either Party

without the prior written consent of the other Party, which consent may be withheld in its sole and absolute discretion. Any attempt of assignment without the other Party's consent shall be deemed void and of no force and effect.

- N. No waiver of any default shall constitute a waiver of any covenant or condition of this Agreement. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- O. In the event of litigation arising from this Agreement, each Party to this Agreement shall bear its own costs, including attorney(s) fees. This paragraph shall not apply to the costs or attorneys' fees relative to paragraphs E and F (related to Indemnity) of this Section V.
- P. This Agreement may be signed in counterparts, each of which shall constitute an original. This Agreement shall be effective on the date it is fully executed by SBCTA and OMNITRANS ("Effective Date").
- Q. There are no third party beneficiaries, and this Agreement is not intended, and shall not be construed to be for the benefit of, or be enforceable by, any other person or entity whatsoever.

VI. ADDITIONAL PROVISIONS

- A. **AMENDMENTS:** No provision of this Agreement may be amended or added to except by an agreement in writing signed by the Parties hereto or their respective successor in interest, expressing by its terms an intention to modify this Agreement.
- B. **SUCCESSORS:** This Agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors, and assigns of the Parties hereto.
- C. **EXHIBITS AND ATTACHMENTS:** All exhibits and attachments referred to in this Agreement are attached and incorporated by reference.
- D. **CAPTIONS AND COVER PAGE:** The paragraph captions and the cover page of this Agreement shall have no effect on its interpretations.
- E. **SEVERANCE:** If any provision of this Agreement is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Agreement, and all such other provisions shall remain in full force and effect, provided, however, that the purpose of the Agreement is not frustrated. It is the intention of the Parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

F. NOTICES: Any notice, demand, request, consent, approval, or communication that either Party desires or is required to give to the other Party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail or email. Any such notice, demand, request, consent, approval, or communication that either Party desires or is required to give to the other Party shall be addressed to the other Party at the address set forth below. Either Party may change its address by notifying the other Party of the change of address. Notice shall be deemed communicated two (2) working days from the time of mailing if mailed as provided in this paragraph, and upon delivery, if personally delivered. Notice given by electronic mail must be confirmed by return electronic mail to be deemed effective.

OMNITRANS's address: P. Scott Graham
Chief Executive Officer/General Manager
1700 West Fifth Street
San Bernardino, CA, 92411
Scott.Graham@omnitrans.org

SBCTA's address: Carrie Schindler, PE
Director of Transit and Rail Programs
1170 W. 3rd Street, 2nd Floor
San Bernardino, CA 92410
cschindler@gosbcta.com

G. SURVIVAL: The obligations of the Parties, which, by their nature, continue beyond the term of this Agreement, will survive the termination of this Agreement.

H. INTERPRETATIONS: As this Agreement was jointly prepared by both Parties, the language in all parts of this Agreement shall be construed, in all cases, according to its fair meaning, and not for or against either Party hereto.

**SIGNATURE PAGE TO
COOPERATIVE AGREEMENT NO. 17-1001638
BETWEEN
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY
and OMNITRANS**

**SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY**

OMNITRANS

By: _____
Alan D. Wapner
Board President

By: _____
P. Scott Graham
CEO/General Manager

Date: _____

Date: _____

APPROVED AS TO FORM

APPROVED AS TO FORM:

By: _____
Julianna K. Tillquist
Assistant General Counsel

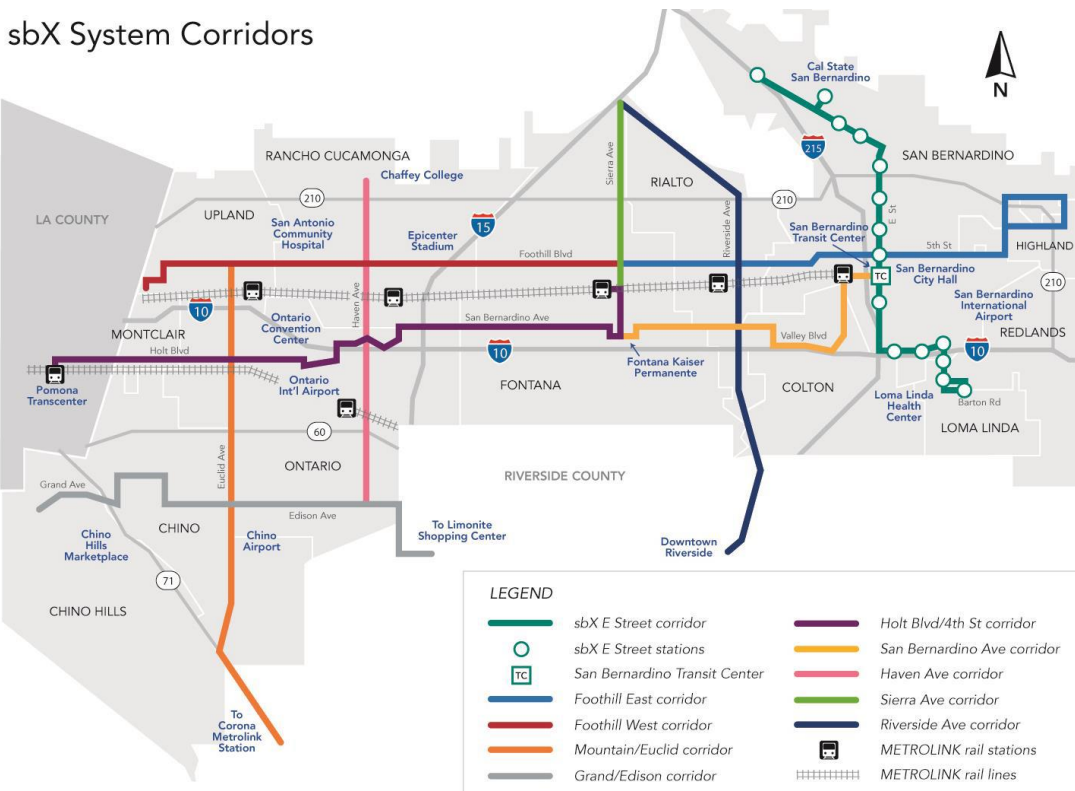
By: _____
Haviva Shane
Omnitrans General Counsel

CONCURRENCE:

By: _____
Jeffery Hill
Procurement Manager

Attachment A Project Scope

- A. The West Valley Connector Corridor is a Bus Rapid Transit line located in the cities of Pomona, Montclair, Ontario, Rancho Cucamonga, and Fontana. The purpose of the Project is to improve the speed and quality of public transit service in the western San Bernardino Valley.
- B. The West Valley Connector Corridor will be the second bus rapid transit line to be operated by Omnitrans as part of the sbX (San Bernardino Valley Express) bus rapid transit system. The first corridor, the “E Street” sbX Green Line, began operating in the cities of San Bernardino and Loma Linda in April 2014. The corridor system map is shown below.



- C. The West Valley Connector Corridor alignment (shown as Attachment C) is proposed to be constructed in two phases. Each of the phases combines portions of up to four of the corridor alignments identified in Omnitrans’ System-wide Transit Corridors Plan for the San Bernardino Valley, produced in 2004 and updated in 2010. These corridors are currently covered by portions of Omnitrans’ existing Routes 61 and 66, two of the highest-ridership routes in Omnitrans’ system.

- i. Phase 1 (Pomona Downtown Stations to Rancho Cucamonga Victoria Gardens) will combine portions of the “Holt / 4th St” corridor and the “Foothill West” corridor.

- ii. Phase 2 (Ontario Airport to Fontana Kaiser) will combine portions of the “Holt / 4th St“ corridor, the “Haven Ave” corridor, the “Foothill West” corridor, and the “Sierra Ave” corridor.
- D. The Alternatives Analysis Summary Report completed by Parsons Transportation Group in September 2014 outlined the feasible alternatives studied for the corridor. The alternatives were subsequently adjusted and the SBCTA Board of Directors approved the recommended alternative on May 3, 2017. It includes the two-phased alignment and station locations shown in Attachment C, as well as the project components listed below.
- i. Pedestrian improvements for access to stations, including concrete boarding area;
 - ii. Stations consisting of the following station components:
 - a. sbX branded pylon;
 - b. Shelter/canopy with wind screen;
 - c. Benches;
 - d. Map/schedule/advertising illuminated display case;
 - e. Pedestrian wayfinding signage;
 - f. Trash receptacle;
 - g. Variable message sign;
 - h. Lighting;
 - i. Functional public art at select stations;
 - j. Minimal landscaping at stations;
 - k. Reinforced concrete bus pads in outside lane pavement;
 - l. Surveillance cameras, emergency telephones, and public address system;
 - iii. Center-running dedicated lanes along 3.5 miles of Holt Boulevard in the City of Ontario, including right-of-way acquisition, widening, and utilities, and construction of six 6 center median stations. This component is dependent on securing adequate funding.
 - iv. New Maintenance Facility appropriate for maintaining and storing the West Valley Connector Phase 1 alignment vehicles.
 - v. Purchase of new vehicles as needed for Phase 1 alignment of the West Valley Connector project.
 - vi. Transit signal priority (TSP) system;
 - vii. Any utility work necessary for all components of the Project;
 - viii. Equipment shall be compatible with Omnitrans’ existing systems, and meet the needs of Omnitrans’ departments, customers, and each of the five cities. Everything specified in the project design must be compliant with applicable laws and consistent with the below-listed guidance and regulations:

- a. Omnitrans Transit Design Guidelines (2013) - <http://www.omnitrans.org/about/reports/>
 - b. Crime Prevention Through Environmental Design - Crime Prevention Through Environmental Design (CPTED) for Transit Facilities, APTA SS-SIS-RP-007-10, Approved June 24 , 2010, APTA Transit Infrastructure, Security Work Group
 - c. Americans with Disabilities Act – current design standards per FTA and State of California
 - d. Current FTA Circular 4220.1F, including Buy America 49 CFR Part 661, NEPA, and Section 5309 Capital Investment Grants (Small Starts) guidance
 - e. Current State of California guidance including Caltrans Highway Design Manual, Manual on Uniform Traffic Control Devices, CEQA guidance, and any relevant State legislation
- E. The above-listed project scope is flexible and may be amended in writing through an amendment to this Agreement.

Attachment B
Project Capital Costs and Funding Shares

PRELIMINARY ESTIMATED CAPITAL COST	
Phase	Costs¹
WVC Corridor	
Environmental & Design	\$ 8,488,045
Right-of-Way and Utilities	\$ 77,886,509
Construction Support	\$ 8,987,895
Construction Capital	\$ 69,288,666
Vehicles	\$ 23,730,000
Subtotal	\$ 188,381,115
Bus Maintenance & Storage Facility	
Environmental and Design	\$ 2,100,000
ROW and ROW Support	\$ 3,587,500
Construction Support	\$ 1,969,922
Construction Capital	\$ 15,759,375
Subtotal	\$ 23,416,797
Program	
Program Management	\$ 5,976,544
Omnitrans Project Management	\$ 1,125,544
Subtotal	\$ 7,102,088
Capital Cost Total	\$ 218,900,000

¹Costs are based on preliminary project cost estimate approved at SBCTA BOD on May 3, 2017 which includes a 2.5% escalation rate compounded annually.

Attachment B
Project Capital Costs and Funding Shares

CAPITAL FUNDING SHARES	
Secured Sources	
SBCTA	
Measure I BRT	\$ 95,000,000
Subtotal	\$ 95,000,000
Omitrans	
Mid-Valley Land	\$ 25,098,407
Mid-Valley Capital	\$ 5,854,578
Ontario Station 5309 Earmark	\$ 210,000
Bus Replacement Funds	\$ 1,622,984
Subtotal	\$ 32,785,969
City of Ontario	
Measure I Arterial Funds	\$ 5,000,000
In-Kind: SCE Undergrounding	\$ 4,300,000
In-Kind: Land Contribution	\$ 3,500,000
Subtotal	\$ 12,800,000
Optimistic Funding	
SBCTA	
CMAQ	\$ 10,000,000
Subtotal	\$ 10,000,000
City of Ontario	
Cap and Trade Grant Funding	\$ 5,000,000
Subtotal	\$ 5,000,000
City of Pomona	
Call for Projects	\$ 1,500,000
Subtotal	\$ 1,500,000
FTA	
Small Starts Grant	\$ 61,814,031
Subtotal	\$ 61,814,031
Capital Funding Shares Total	\$ 218,900,000

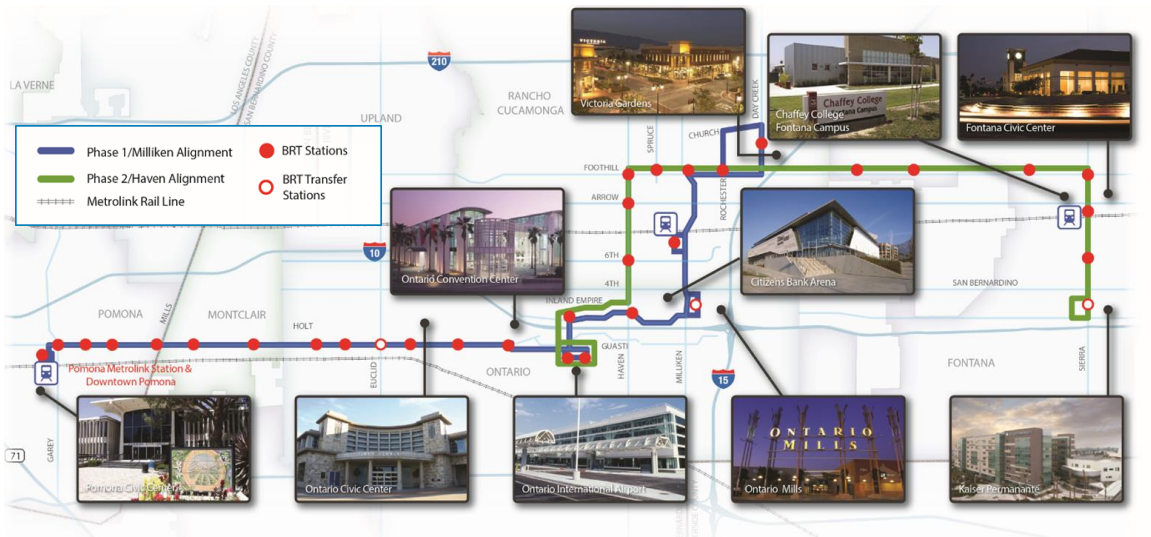
Attachment C
Project Milestone and Anticipated Schedule (subject to modification)

Milestone	Schedule	
Transfer of Project	JUL - 2017	JUL - 2017
Environmental Approval	MAY - 2017	MAR - 2018
Design (Phase 1)	NOV - 2017	MAY - 2019
ROW (Phase 1)	APR - 2018	AUG - 2019
Construction (Phase 1)	JUL - 2019	DEC - 2022
Commence Operations	DEC - 2022	DEC - 2022

Attachment D-NOT USED

Attachment E

Conceptual Layout



Attachment F Continuing Control

This section applies to any parties who will own, maintain, or use the PROJECT Property, including the cities that own the right-of-way for the PROJECT.

Use and Control of PROJECT Property:

- A. In General - OMNITRANS shall maintain satisfactory continuing control over the PROJECT Property, or shall transfer such obligation as specified in paragraph (D) below, for its useful life, to carry out the authorized purpose of the PROJECT for which Federal funds were used, in accordance with FTA requirements and grant conditions. Continuing control of PROJECT Property shall mean ensuring that such property is properly used and safeguarded solely for FTA authorized purposes, except for any incidental use as specified below.
- B. Period of Continuing Control – OMNITRANS’ exercise of continuing control over the PROJECT Property shall continue for the useful life of the PROJECT Property and for as long as the PROJECT Property is needed, in OMNITRANS’ judgment, for the PROJECT purposes for which the FTA funds were expended, and shall include any time period necessary to dispose of the PROJECT Property in accordance with FTA requirements and procedures. FTA Award Management Requirements Circular (FTA Circular 5010.1E) provides factors for determining the “useful life” of PROJECT property, including type of construction, nature of the equipment used, historical use patterns, and technological developments. Decisions related to useful life of PROJECT Property shall be made in accordance with Circular 5010.1E, and any other applicable FTA guidance.
- C. Use - SBCTA agrees to use the PROJECT Property for appropriate PROJECT purposes to support public transportation activities. SBCTA agrees to notify OMNITRANS prior to withdrawing any PROJECT Property from PROJECT use, or when any PROJECT Property is used in a manner substantially different from that identified and agreed to in this AGREEMENT.
- D. Maintenance - SBCTA agrees to maintain PROJECT Property in good operating order, in compliance with any applicable Federal laws and regulations, and in accordance with applicable Federal directives. SBCTA will transfer maintenance responsibility to the appropriate cities and OMNITRANS when the PROJECT Property is transferred to cities and OMNITRANS.
- E. Records - SBCTA agrees to keep satisfactory records of the use of the PROJECT Property, and upon request, to submit to OMNITRANS such

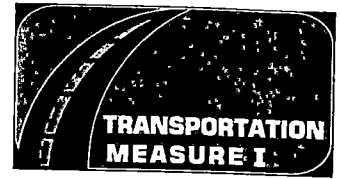
information as may be required by the FTA to ensure continuing control and assure compliance with FTA's Master AGREEMENT, until the PROJECT Property is transferred to cities and OMNITRANS.

- F. Incidental Use - Any incidental use of PROJECT Property will not exceed that permitted under applicable Federal laws or regulations in accordance with applicable Federal directives. Any incidental use for non-transit purposes must be compatible with the PROJECT and be approved by FTA in coordination with OMNITRANS .
- G. Transfer or Lease of Property - Any transfer or lease of Project Property, such as to cities and OMNITRANS, shall be coordinated and approved by OMNITRANS.
- H. Title to PROJECT Property - SBCTA shall retain title to PROJECT Property until it is transferred to the appropriate cities and OMNITRANS.



San Bernardino Associated Governments

1170 W. 3rd Street, 2nd Fl, San Bernardino, CA 92410
Phone: (909) 884-8276 Fax: (909) 885-4407
Web: www.sanbag.ca.gov



-
- San Bernardino County Transportation Commission •San Bernardino County Transportation Authority
 - San Bernardino County Congestion Management Agency •Service Authority for Freeway Emergencies
-

October 20, 2015

Omnitrans
1700 W. Fifth Street
San Bernardino, CA 92411
Attn: Scott Graham

Subject: NOTICE TO PROCEED – CONTRACT 15-1001289

Dear: Scott Graham

The San Bernardino Associated Governments (SANBAG) has reviewed and approved contract 15-1001289 for MOU Between Omnitrans and SANBAG For Future Project Management. The "Notice to Proceed" date for this contract shall be October 15, 2015, on or after which SANBAG grants authorization to Omnitrans to begin work on the contract.

SANBAG's Project Manager is Nancy Strickert who is the designated point of contact for all technical issues on this project. You may contact Nancy Strickert at (909) 884-8276 or via email at nstrickert@sanbag.ca.gov.

Should you have any questions or concerns with the contract, please contact our Procurement Manager, Jeffery Hill at (909) 884-8276 or via email at jhill@sanbag.ca.gov.

Sincerely,

David Gallardo
San Bernardino Associated Governments
Procurement Analyst

Enclosed: Contract 15-1001289

MOU 15-1001289
Between
Omnitrans
and
San Bernardino Associated Governments

This Memorandum of Understanding (MOU) is made and entered into by and between Omnitrans, a joint powers authority (OMNITRANS) and San Bernardino Associated Governments, acting in its capacity as the San Bernardino County Transportation Commission, (SANBAG) to outline future project management costs for Omnitrans to assist SANBAG in receiving Federal Transit Administration (FTA) for future projects.

WHEREAS, OMNITRANS is an eligible direct recipient of FTA funds and processes grant applications through FTA on an annual basis; and

WHEREAS, SANBAG will use federal funding for delivery of various projects in the San Bernardino Valley subarea under the jurisdiction of FTA; and

WHEREAS, SANBAG is not an eligible direct recipient of FTA funding and needs assistance to receive this funding; and

WHEREAS, OMNITRANS, as an FTA Grantee, has the staff and other resources to provide such assistance to SANBAG.

NOW THEREFORE, in consideration of the foregoing recitals and the terms and conditions herein, SANBAG and OMNITRANS agree as follows:

- I. TERM. This MOU shall be effective for five years from the date approved by the last party, but may be terminated earlier or extended by mutual consent.
- II. SANBAG RESPONSIBILITIES:
 - A. SANBAG will notify OMNITRANS on a project-by-project basis of the need for assistance in receiving FTA funding and provide the required project information.
 - B. SANBAG will prepare project-specific subrecipient agreements for review and approval by both SANBAG and OMNITRANS that are consistent with the parameters of this MOU.
 - C. SANBAG will work with OMNITRANS to prepare a transfer request if such funding needs to be transferred from the Federal Highway Administration (FHWA) to the FTA.
 - D. SANBAG shall reimburse OMNITRANS for the actual cost of managing and monitoring subrecipient agreements and federal grant funding as identified on project-specific invoices.

E. SANBAG shall comply with all requirements of the FTA Master Agreement that coincides with the year of grant submittal.

F. SANBAG shall submit to OMNITRANS on a quarterly basis reports that document the status of the project, including task completion status and budget status as needed by FTA.

G. SANBAG shall conduct itself so that any aspect of OMNITRANS' participation in this MOU and the actions required of it hereunder will be in compliance with the terms of the grant that is being sought and with applicable law.

III. OMNITRANS RESPONSIBILITIES

A. OMNITRANS will review project-specific subrecipient agreements for approval by both SANBAG and OMNITRANS that are consistent with the parameters of this MOU.

B. OMNITRANS, as the FTA Grantee, will submit grant applications to the FTA to obtain funding for SANBAG.

C. OMNITRANS will work with SANBAG to prepare a transfer request if such funding needs to be transferred from the Federal Highway Administration (FHWA) to the FTA.

D. OMNITRANS agrees to charge SANBAG only for actual costs incurred for managing and monitoring subrecipient agreements. Federal grant funding will not include a deduction for OMNITRANS' flat Cost Allocation Plan (CAP) fee. OMNITRANS will submit invoices to SANBAG for actual costs incurred.

E. OMNITRANS shall comply with all requirements of the FTA Master Agreement that coincides with the year of grant submittal.

F. OMNITRANS shall conduct itself so that any aspect of SANBAG's participation in this MOU and the actions required of it hereunder will be in compliance with the terms of the grant that is being sought and with applicable law.

IV. THE PARTIES MUTUALLY AGREE:

A. That this MOU and its content will be used in creating subrecipient agreements between OMNITRANS and SANBAG.

B. Neither SANBAG, nor any related entity, officer, director, member, employee or contractor thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by OMNITRANS in connection with the ongoing program or in connection with any work SANBAG delegated to OMNITRANS under this Contract. It is understood and agreed that, pursuant to Government Code Section 985.4, OMNITRANS shall fully defend, indemnify and save harmless SANBAG, its related entities, officers, directors, members, employees and

contractors from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) or damage occurring by reason of anything done or omitted to be done by OMNITRANS in connection with any work SANBAG delegated to OMNITRANS under this Contract. OMNITRANS's indemnification obligation applies to SANBAG's passive negligence but does not apply to SANBAG's, "sole negligence" or "willful misconduct" within the meaning of Civil code Section 2782.

Neither OMNITRANS, nor any officer, director, employee or contractor thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by SANBAG in connection with the ongoing program or in connection with any work under this Contract. It is understood and agreed that, pursuant to Government Code Section 985.4, SANBAG shall fully defend, indemnify and save harmless OMNITRANS, its officers, directors, employees and contractors from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) or damage occurring by reason of anything done or omitted to be done by SANBAG in connection with any work under this Contract. SANBAG's indemnification obligation applies to OMNITRANS's passive negligence but does not apply to OMNITRANS's "sole negligence" or "willful misconduct" within the meaning of Civil code Section 2782

V. NOTICES

When notices are required, such notices shall be provided in writing, sent by mail to the appropriate address listed below:

OMNITRANS: P. Scott Graham
Chief Executive Officer/General Manager
700 W Fifth Street
San Bernardino, CA 92411

SANBAG: Ray Wolfe
Executive Director
1170 West Third Street, Second Floor
San Bernardino, CA 92410-1715

VI. INVALID CONDITIONS:

If any one or more terms, conditions or promises of this MOU shall to any extent be judged invalid, void, voidable or unenforceable by a court of competent jurisdiction, the remaining terms shall not be affected and shall be valid and enforceable to the fullest extent permitted by law.

VII. LEGAL FEES

In the event of any contract dispute hereunder, each party to this MOU shall bear its own attorney's fees and costs regardless of who prevails in the outcome of the dispute.

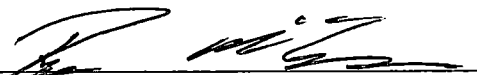
VIII. CONCLUSION

A. This MOU constitutes an integrated agreement, expressing the understanding of the parties concerning the subject matter of this agreement, and it supersedes all prior understandings, whether oral or written, express or implied.

B. This MOU may be executed in counterparts. When executed by all parties, each counterpart shall be deemed an original irrespective of the date of execution and shall together constitute one and the same MOU.


IN WITNESS THEREOF, the authorized parties have signed below:

**SAN BERNARDINO
ASSOCIATED GOVERNMENTS**

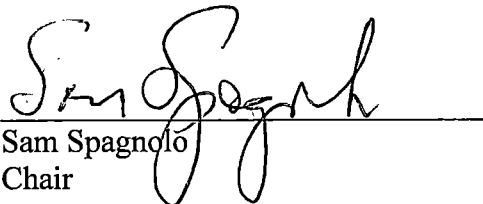

Ryan McEachron
President

Date: 10/15/15

Approved as to Form:


Eileen Monaghan Teichert
SANBAG General Counsel

OMNITRANS


Sam Spagnolo
Chair

Date: 9-2-15

Approved as to Form:


Carol Greene
OMNITRANS Legal Counsel