

**FUNDING AGREEMENT
BETWEEN
OMNITRANS
AND
CITY OF RIALTO**

This Funding Agreement for Measure I funds (“**Agreement**”) by and between City of Rialto (“**Rialto**”), a municipal government and Omnitrans, a Joint Powers Authority and a Consolidated Transportation Services Agency (“**Omnitrans**”), is entered into this 1st day of July 2022. Rialto and Omnitrans are sometimes individually referred to as “**Party**” and collectively as “**Parties.**”

RECITALS

WHEREAS, in its capacity as the Consolidated Transportation Services Agency (“**CTSA**”) for the San Bernardino Valley, Omnitrans has the ability to provide Measure I funds to other entities for projects that improve mobility for persons with disabilities, senior citizens, and persons of low income; and

WHEREAS, Rialto proposes the operation of a new program, Rialto Specialized Transportation (“**Project**”); and

WHEREAS, Omnitrans desires to provide assistance funds to Rialto, on a reimbursable basis, for the Project; and

WHEREAS, the parties wish to enter into this Agreement to document the terms and conditions of Omnitrans funding of the Project.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

Project Description: The Rialto Specialized Transportation will be used for individuals to travel to essential destinations that include their local grocery stores, health and wellness appointments, housing and income appointments, job interviews, selfcare, leisure and recreation, as set forth in Rialto’s Project, attached hereto as Exhibit A. Any proposed amendment to Exhibit A must be agreed to in advance by the parties pursuant to a written amendment.

1. Term: This Agreement will be for a term of two (2) years and shall expire on June 30, 2024, unless otherwise terminated as provided for in this Agreement or extended by written agreement between the parties.

2. Funding Amount: The amount to be paid to Rialto under this Agreement will not exceed \$249,012 in operating expenses, with annual not to exceed amounts of \$83,039 in Fiscal Year

2023 and \$165,973 in Fiscal Year 2024. A total of \$228,982 in capital expenses, with annual not to exceed amounts of \$145,702 in Fiscal Year 2023 and \$83,280 in Fiscal Year 2024 - unless agreed to in advance by the parties pursuant to a written amendment. In no instance will Omnitrans be liable for any payments or costs for work in excess of these amounts, nor for costs not listed in Project Budget, attached hereto as Exhibit B.

3. Payment:

- a. On a monthly basis, Rialto will provide Omnitrans with an invoice for reimbursement pursuant to Subsections 4.b. and 4.c., below.
- b. Payments for operating expenses to Rialto hereunder will be made in arrears. Rialto will submit a detailed and properly documented invoice for reimbursement not more often than monthly, which invoice will include: (i) a description of the work performed; and (ii) a detailed accounting of costs incurred.
- c. Payments for capital expenses, including but not limited to vehicles, may be requested in advance, upon presentation of a valid vendor invoice for such purchases
- d. Rialto will be notified within ten (10) business days following receipt of its invoice by Omnitrans of any circumstances or data in Rialto's invoice that would cause withholding of approval and subsequent payment. Rialto's invoice will include documentation of reimbursable expenses and billed items sufficient for Omnitrans, in its opinion, to substantiate billings. Omnitrans reserves the right to withhold payment of disputed amounts.
- e. At no time shall payments from Omnitrans be used to supplant any existing funding source for Rialto's Project. Rialto shall notify Omnitrans of any potential loss of funding for the existing Rialto services within ten (10) business days of learning of the funding loss.

4. Progress Reports: Rialto will provide Omnitrans with monthly Project Milestones updates on the Project, as set forth in Exhibit A. In cooperation with Omnitrans, Rialto shall develop national ridership data reporting mechanisms sufficient for reporting as part of the NTD (National Transit Database) reporting system and shall provide such data to Omnitrans monthly.

5. Advisory Committee Participation: Rialto shall attend and participate in advisory committee meetings, as mutually agreed upon by Omnitrans and the San Bernardino County Transportation Authority.

6. Compliance with Laws: Rialto will comply with all applicable federal, state, and local laws, codes, ordinances, regulations, orders, circulars, and directives, including, without limitation: (i) all regulatory requirements associated with the funding provided to the Rialto for this Project; (ii) all disability laws; and (iii) non-discrimination and equal opportunity laws. Any

failure by Rialto to comply with such laws may result in the termination of this Agreement or such other remedy as Omnitrans deems appropriate.

7. Independent Contractor: Rialto, and the agents and employees of Rialto, in the performance of this Agreement, will act as and be independent contractors, and not officers, employees, or agents of Omnitrans. Rialto, its officers, employees, agents, and contractors, if any, will have no power to bind or commit Omnitrans to any decision or course of action, and will not represent to any person or business that they have such power. Rialto has and will retain the right to exercise full control of the supervision of the Rialto Project, and over the employment, direction, compensation, and discharge of all persons assisting in the performance of the work funded by this Agreement. Rialto will be solely responsible for all matters relating to the payment of its employees and contractors, including but not limited to, compliance with all laws, statutes, and regulations governing such matters.

8. Termination:

- a. Omnitrans may terminate this Agreement for cause by giving Rialto a notice of default and intention to terminate the Agreement (“Termination Notice”). The notice will be deemed served and effective for all purposes on the date it is deposited in the U.S. mail, certified, return receipt requested, addressed to Rialto at the address indicated in Section 20 below.
- b. Upon receipt of a Termination Notice, Rialto shall have 30 days in which to cure the stated violation(s) and to provide to Omnitrans sufficient evidence that the violations have been cured. If Rialto has not cured within 30 days of such notice or has not provided sufficient evidence of such to Omnitrans, the Agreement shall be terminated, effective immediately.
- c. Omnitrans may also terminate this Agreement in the event of Measure I or federal grant funding shortfall, upon 15 days written notice. Such notice will be served and effective as set forth in Subsection 9.a., herein.
- d. Omnitrans may also terminate this Agreement in the event of a funding shortfall for RIALTO’s Project or the failure to provide notice to Omnitrans of such funding shortfall, as required pursuant to section 4.e. In the event Rialto fails to provide the notice required pursuant to section 4.e., Omnitrans is not required to give Rialto an opportunity to cure such violation.
- e. If Omnitrans issues a Termination Notice or terminates this Agreement due to a funding shortfall, Omnitrans will reimburse Rialto for work actually performed up to the effective date of the Termination Notice, subject to the limitations in Section 4, and less any compensation to Omnitrans for damages suffered as a result of Rialto’s failure to comply with the terms of this Agreement.

- f. Rialto will have the right to terminate this Agreement in the event Omnitrans is unable to make required payments. In such event, Rialto will provide Omnitrans with seven (7) days written notice of termination. The notice will be deemed served and effective on the date it is deposited in the U.S. mail, certified, return receipt requested, addressed to Omnitrans at the address indicated in Section 20. Omnitrans will make payment to Rialto through the date of termination, subject to the provisions of Section 4 above, and less any compensation to Omnitrans for damages suffered as a result of Rialto's failure to comply with the terms of this Agreement.

10. Assignment: The parties understand that Omnitrans entered into this Agreement based on the Project proposed by Rialto. Therefore, without the prior express written consent of Omnitrans, this Agreement is not assignable by Rialto either in whole or in part.

11. Binding Agreement: This Agreement will be binding on the parties hereto, their assigns, successors, administrators, executors, and other representatives.

12. Time: Time is of the essence in this Agreement and will follow the Project Milestones timeline set forth in Exhibit A, unless modified pursuant to Section 13.

13. Amendments: No alteration or variation of the terms of this Agreement will be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, will be binding on any of the parties hereto.

14. Contractors and Subcontractors: Rialto will be fully responsible for all work performed by its contractors and subcontractors. Omnitrans reserves the right to review and approve any contract or agreement to be funded in whole or in part using funds provided under this Agreement in excess of \$25,000. Rialto shall incorporate the terms of this Agreement, including without limitation the indemnification and insurance provisions, into any subcontractor agreement funded by this Agreement.

15. Indemnification. Rialto shall defend, indemnify and hold Omnitrans, its directors, officials, officers, employees, agents and/or volunteers free and harmless from any and all liability from loss, damage, or injury to property or persons, including wrongful death, in any manner arising out of or incident to any acts, omissions or willful misconduct of Rialto or any of its directors, officials, officers, employees, agents, volunteers, or service providers arising out of or in connection with Rialto's performance of this Agreement, including, without limitation, the payment of consequential damages and attorneys' fees. Further, Rialto shall defend, at its own expense, including the payment of attorneys' fees, Omnitrans, its officials, officers, employees, agents and/or volunteers in any legal action based upon such acts, omissions or willful misconduct. Rialto shall reimburse Omnitrans, its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

16. Insurance. Rialto shall require all contractors or consultants hired to perform work or services on the Project to obtain and require their sub-consultants and sub-contractors to obtain, insurance of the types and in the amounts described below and satisfactory to Omnitrans. Rialto may satisfy its insurance obligations herein through participation in a program of self-insurance. Such insurance shall be maintained throughout the term of this Agreement, or until completion of the Project, whichever occurs last. Upon request, Rialto will provide written certificates evidencing compliance to Omnitrans.

- a. Commercial General Liability Insurance. Occurrence version commercial general liability insurance or equivalent form with a combined single limit of not less than \$1,000,000.00 per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the Project or be no less than two times the occurrence limit. Such insurance shall:
- b. Business Automobile Liability Insurance. Business automobile liability insurance or equivalent form with a combined single limit of not less than \$1,000,000.00 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles.
- c. Workers' Compensation Insurance. Workers' compensation insurance with statutory limits and employers' liability insurance with limits of not less than \$1,000,000.00 each accident.

17. Audit: An independent auditor shall audit Rialto's use of Project funds no less than annually. Rialto agrees to supply Omnitrans with a copy of any audit of Project related activities performed.

18. Retention and Inspection of Records

- a. Rialto, including any contractors or subcontractors, will retain all driver training records and vehicle maintenance and safety records.
- b. Omnitrans or its designee will have the right to review, obtain, copy, and audit all books, records, computer records, accounts, documentation and any other materials pertaining to performance of this Agreement (collectively "Records"), including any Records in the possession of any contractors or subcontractors. Rialto agrees to provide Omnitrans or its designee with any relevant information requested and will permit Omnitrans or its designees access to its premises, upon reasonable notice, during normal business hours, for the purpose of interviewing employees and inspecting and copying such Records for the purpose of determining compliance with any applicable federal and state laws and regulations.
- c. Rialto further agrees to maintain all Project Records for a period of four (4) years after final payment under the Agreement or four (4) years from the conclusion or resolution of any and all audits or litigation relevant to this Agreement and any amendments,

whichever is later. If so directed by Omnitrans upon expiration of this Agreement, Rialto will cause all Records relevant to the Project to be delivered to Omnitrans as depository.

19. Signs: Rialto will include the Omnitrans logo and/or Measure I signage on Project related marketing materials and on vehicles operated with Omnitrans funding, including:

- a. Vehicles purchased or operated with Measure I funds shall display signs clearly visible to riders indicating the vehicle is funded in part through Measure I funding.
- b. Signage must conform with approved Measure I signage and be approved by Omnitrans.

20. Notices. All notices hereunder shall be in writing and shall be effective upon receipt. All notices and communications, including invoices, between the Parties to this Agreement shall be either personally delivered, sent by first-class mail, return receipt requested, or sent by overnight express delivery service, postage or other charges fully prepaid, as follows:

TO OMNITRANS:

Omnitrans
1700 West Fifth Street
San Bernardino, CA 92411
ATTN: Chief Strategy and Planning Officer

TO RIALTO:

City of Rialto
214 North Palm Street
Rialto, CA 92376
ATTN: Cynthia Alvarado

21. Waivers: No waiver of any breach of this Agreement will be held to be a waiver of any prior or subsequent breach. The failure of Omnitrans to enforce at any time the provisions of this Agreement or to require at any time performance by Rialto of these provisions, will in no way be construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of Omnitrans to enforce these provisions.

22. Litigation: Rialto will notify Omnitrans immediately of any claim or action undertaken by it or against it that affects or may affect this Agreement or Omnitrans and will take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of Omnitrans.

23. Non-Liability of Omnitrans: Omnitrans shall not be liable to Rialto or any third party for any claim for loss of profits or consequential damages. Further, Omnitrans shall not be liable to Rialto or any third party for any loss, cost, claim or damage, either direct or consequential, allegedly arising from a delay in performance or failure to perform under this Agreement. There are no third-party beneficiaries to this Agreement

24. Costs and Attorneys' Fees: If either party commences any legal action against the other party arising out of this Agreement or the performance thereof, the prevailing party in such action may recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and reasonable attorneys' fees.

25. Governing Law and Choice of Forum: This Agreement will be administered and interpreted under California law as if written by both parties. Any litigation arising from this Agreement will be brought in the Superior Court of San Bernardino County.

26. Integration: This Agreement represents the entire understanding of Omnitrans and Rialto as to those matters contained herein and supersedes all prior negotiations, representations, or agreements, both written and oral. This Agreement may not be modified or altered except in accordance with Section 13.

27. Severability: If any term or provision of this Agreement or the application thereof to any person or circumstance will, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is invalid or unenforceable, will not be affected thereby, and each term and provision of this Agreement will be valid and will be enforced to the fullest extent permitted by law, unless the exclusion of such term or provision, or the application of such term or provision, would result in such a material change so as to cause completion of the obligations contemplated herein to be unreasonable.

28. Headings: The headings of the various sections of this Agreement are intended solely for convenience of reference and are not intended to explain, modify, or place any interpretation upon any of the provisions of this Agreement.

29. Authority: Each person signing this Agreement on behalf of a party hereby certifies, represents, and warrants that he or she has the authority to bind that party to the terms and conditions of this Agreement.

30. Ownership; Permission: Omnitrans represents and warrants that all materials used in the performance of the Project work, including, without limitation, all computer software materials and all written materials, are either produced or owned by Rialto or that all required permissions and license agreements have been obtained and paid for by Rialto. Rialto will defend, indemnify and hold harmless Omnitrans and its directors, officers, employees, and agents from any claim, loss, damage, cost, liability, or expense to the extent of any violation or falsity of the foregoing representation and warranty.

31. Counterparts: This Agreement may be executed in multiple counterparts, each of which will constitute an original, and all of which taken together will constitute one and the same instrument.

32. Press Releases: Rialto will obtain Omnitrans' prior written approval of any press releases, or other public outreach materials, that include any reference to Omnitrans or depiction of the Omnitrans logo.

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement, as of the date first appearing above.

By:

Erin Rogers
CEO/General Manager
Omnitrans

Marcus Fuller
City Manager
City of Rialto

Attest by:

Barbara McGee, City Clerk

Approved as to form:

Omnitrans Legal Counsel

Eric Vail, City Attorney

EXHIBIT A

Project Narrative

The Rialto Specialized Transportation Program will provide free on demand-response transportation, providing curb to curb service for all members of our target population. This program is designed to address transportation equity, inclusion, and accessibility for diverse older adults and people with disabilities. This program also will meet the transportation needs of senior citizens and those with disabilities in the City of Rialto, who are physically or mentally unable to utilize other forms of transportation.

Rialto Specialized Transportation will be used for individuals to travel to essential destinations that include their local grocery stores, health and wellness appointments, housing and income appointments, job interviews, selfcare, leisure and recreation.

Referrals can be made through our multiple partners at the Grace Vargas Senior Center, Rialto Family Resource Center, The Rialto Carl Johnson Community Center or the Rialto Farmer's Market. There will also be information and a resource booth that our department will have providing program information at all City of Rialto City-wide special events. The City and department will also use all department social media outlets (Facebook, Instagram, and City web page). Once referrals have been made, City staff will check information for accuracy, collect input form for monthly reporting and distribute information for future use. Days of operation Monday through Friday 8 am to 5 pm.

The Community Services Supervisor will manage the administrative part of the Specialized Transportation Program. This will deal with services and supplies, city wide advertisement, staff hires and evaluations, grant reporting of program numbers and activities, community input and presentations. The Recreation Programmer at Grace Vargas Senior Center will operate the program on a day-to-day basis which will include transportation scheduling and addressing program changes, biweekly special destination schedules, client appointments and surveys. In Year one of the program implementation, one full time driver and one part-time driver will be hired to attend to the scheduled site visits, appointments, and other needs of the program. Staff will hire a second full time driver in year two of the program. Our own fleet division will maintain the three vehicles used to ensure they are operational and safe for passenger transport.

EXHIBIT B

Project Budget

OPERATING EXPENSES PROPOSED PROJECT BUDGET FORM					
Agency Name:	City of Rialto				
Project Title:	Specialized Transportation Program				
EXPENSES	Position % Time	Jul '22 - Jun '23	Jul '23 - Jun '24	TOTAL	
Salaries by Position (include benefits):					
(Example: drivers, scheduler, trainer etc.)					
A. 1 FTE Bus Driver (40 Hrs X 52Wks @ 16.4559) for Year one (second FTE driver on year two).	100	\$ 34,228.27	\$ 68,456.54	\$ 102,684.82	
Medicare (0.0145000)	100	\$ 446.68	\$ 893.36	\$ 1,340.04	
PERPRA (0.0747000)	100	\$ 2,301.17	\$ 893.36	\$ 3,194.53	
PERRA-UAL(0.0054000)	100	\$ 166.35	\$ 332.70	\$ 499.05	
Medical	100	\$ 15,000.00	\$ 30,000.00	\$ 45,000.00	
Dental	100	\$ 707.88	\$ 707.88	\$ 1,415.76	
Dep Life	100	\$ 22.80	\$ 1,415.76	\$ 1,438.56	
Vision	100	\$ 236.88	\$ 473.76	\$ 710.64	
B. 1PT Driver (1000 hrs a year @ 16.4559)	100	\$ 16,455.90	\$ 16,455.90	\$ 32,911.80	
C. 1PT Driver (1000 hrs a year @ 16.4559)			\$ 16,455.90	\$ 16,455.90	
Total Salaries & Benefits		\$ 69,565.93	\$ 136,085.16	\$ 205,651.10	
Non-Personnel Expenses:					
(Example: fuel, rent, insurance, utilities etc.)					
A. Supplies		\$ 8,000.00	\$ 22,336.18	\$ 30,336.18	
B. Fuel (year one with two vans, year two with three).		\$ 17,000.00	\$ 32,000.00	\$ 49,000.00	
C. Insurance		\$ 1,500.00	\$ 3,500.00	\$ 5,000.00	
D. Trip Master Software (year one has one time training fees)		\$ 4,710.00	\$ 7,502.20	\$ 12,212.20	
E.		\$ -	\$ -	\$ -	
Total Non-Personnel Expenses		\$ 31,210.00	\$ 65,338.38	\$ 96,548.38	
Administrative Overhead (calculated at 3%)		\$ 3,023.28	\$ 6,042.71	\$ 9,065.98	
TOTAL PROJECT EXPENSES		\$ 103,799.21	\$ 207,466.25	\$ 311,265.46	
REVENUES					
Agency Match (Cash)					
(Example: General Fund, CDBG, Donations, etc)					
A. General Fund		\$ 6,846.66		\$ 6,846.66	
B. CDBG		\$ -	\$ 14,276.22	\$ 14,276.22	
C.		\$ -	\$ -	\$ -	
Total Cash Match		\$ 6,846.66	\$ 14,276.22	\$ 21,122.87	
Agency Match (In-Kind)					
Salaries by Position (include benefits):					
A. 1 FTE Bus Driver: 40 HRs/Week	100%	\$ 10,622.01	\$ 20,634.67	\$ 31,256.68	
B. 1 PT Bus Driver: 20 HRS/Week	100	\$ 3,291.18	\$ 3,291.18	\$ 6,582.36	
C. 1PT Driver 20 HRS/Week	100	\$ -	\$ 3,291.18	\$ 3,291.18	
Non-Personnel Match (in-kind):					
		\$ -	\$ -	\$ -	
		\$ -	\$ -	\$ -	
Total In-Kind Match		\$ 13,913.19	\$ 27,217.03	\$ 41,130.22	
Measure I Request		\$ 83,039.37	\$ 165,973.00	\$ 249,012.37	
Measure I Portion (not to exceed 80%)		80.00%	80.00%	80.00%	

CAPITAL EXPENSES PROPOSED PROJECT BUDGET FORM						
Agency Name:		City of Rialto				
Project Title:		Specialized Transportation Program				
CAPITAL EXPENSES				Jul '22- Jun '23	Jul '23 - Jun'24	TOTAL
Capital Asset(s)						
(Example: Vehicle Yr/Make/Model, Software, etc.)						
A. 2022/Ford Transit-350 Passenger XL (ADA)				\$ 98,669.56	\$ 92,533.33	\$ 191,202.89
B. 2022/Ford Transit 350 Passenger XL (NON-ADA)				\$ 63,221.55	\$ -	\$ 63,221.55
C.				\$ -	\$ -	\$ -
D.				\$ -	\$ -	\$ -
E.				\$ -	\$ -	\$ -
TOTAL CAPITAL EXPENSES				\$ 161,891.11	\$ 92,533.33	\$ 254,424.44
REVENUES						
Agency Match (Cash)						
(Example: General Fund, Donations, etc)						
A. General Fund				\$ 16,189.11	\$ 9,253.33	\$ 25,442.44
				\$ -		\$ -
C.				\$ -	\$ -	\$ -
D.				\$ -	\$ -	\$ -
E.				\$ -	\$ -	\$ -
F.				\$ -	\$ -	\$ -
Total Cash Match				\$ 16,189.11	\$ 9,253.33	\$ 25,442.44
Measure I Request				\$ 145,702.00	\$ 83,280.00	\$ 228,982.00
Calculated Measure I Portion (not to exceed 90%)				90.00%	90.00%	90.00%