


# **CITY OF RIALTO**

## **AGENDA REPORT**

For City Council Meeting of April 12, 2011

TO:	Honorable Mayor and Council Members
APPROVAL:	Mark Kling, Police Chief/Interim City Administrator
FROM:	Ahmad R. Ansari, P.E., Public Works Director/City Engineer 
SUBJECT:	Approve an Agreement with Omnitrans to Administer the Federal Transit Administration Grant for the Metrolink Parking Lot Expansion Project in the Amount Not to Exceed \$113,960.
DATE:	March 9, 2011

### **BACKGROUND:**

Growth in Metrolink usage by residents of the City of Rialto and surrounding communities has led to an increase of vehicles parking at Rialto's Metrolink Depot, which now exceeds the parking lot capacity. The San Bernardino Associated Governments (SANBAG) has identified Rialto's Metrolink station as one of the commuter rail stations in the County that is most in need of additional parking spaces.

### **ANALYSIS/DISCUSSION:**

Federal Transit Administration (FTA) awarded \$3,485,000 for the Metrolink Parking Lot Expansion Project. This agreement describes the respective responsibilities of the City and Omnitrans relative to this project. The City will utilize this funding to design and construct the Metrolink Parking Lot Expansion Project and Omnitrans, as the FTA grantee, will prepare and process all the paper work and administer the funding. In addition, Omnitrans will prepare any required or requested reports to the FTA. As compensation for the obligations undertaken, Omnitrans will charge 3.27% of the total FTA amount, not to exceed \$113,960, for administrative expenses.

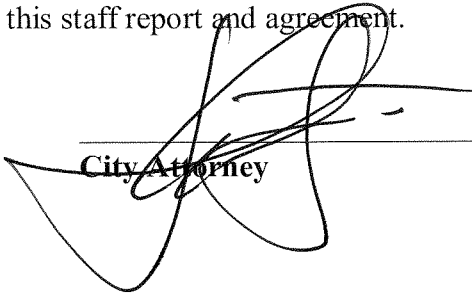
City staff recommends that the City Council approve the agreement between the City and Omnitrans.

### **ENVIRONMENTAL IMPACT:**

None.


**LEGAL REVIEW:**

The City Attorney has reviewed and approved this staff report and agreement.

  
\_\_\_\_\_  
City Attorney

**FINANCIAL IMPACT:**

The execution of the attached contract enables Omnitrans to secure FTA grant funding of \$3,485,000 for the Metrolink Parking Project. Once the grant has been awarded to Omnitrans and the City, as sub-grantee, staff will bring this item back to Council for approval. The budgets will be appropriated at the same time.

  
\_\_\_\_\_  
**Interim Chief Financial Officer**

**RECOMMENDATIONS:**

Staff recommends that the City Council:

- Approve the Agreement between the City of Rialto and Omnitrans for the administrative work for FTA Funding for the Metrolink Parking Lot Expansion Project.
- Authorize the Mayor to execute the agreement subject to such modifications as she may deem advisable.

Attachment: Agreement with Omnitrans.

Report prepared by: Ahmad R. Ansari, P.E., Public Works Director/City Engineer  
Susanne Wilcox, Administrative Analyst

**Attachment**

**Agreement  
with  
Omnitrans**

**CITY OF RIALTO**  
**and**  
**OMNITRANS**  
**FUNDING AGREEMENT**  
**FOR RIALTO METROLINK PARKING LOT EXPANSION**

This Funding Agreement for Rialto Metrolink Parking Lot Expansion for the City of Rialto is entered into this \_\_\_ day of \_\_\_\_\_, 2011, by and between the City of Rialto (“**CITY**”), and Omnitrans, a Joint Powers Authority (“**Omnitrans**”) (City of Rialto and Omnitrans are collectively referred to herein as the “**Parties**”).

**Recitals**

A. This Agreement describes the respective responsibilities of the CITY and Omnitrans relative to the Rialto Metrolink Parking Lot Expansion.

B. The CITY will use the funding for the Rialto Metrolink Parking Lot Expansion (the “**PROJECT**”). The PROJECT will be located at the John Longville Metrolink Station, located at 261 South Palm Avenue within the City of Rialto. The Metrolink station is a regional transit hub serving the residents of Rialto and surrounding communities. This PROJECT will add approximately 230 parking spaces to the existing parking lot, which currently has 175 spaces. The PROJECT will expand into two new locations and convert 11 existing general parking spaces to seven (7) new handicapped parking spaces. The additional parking area would be a single-level asphalt surface lot.

C. Omnitrans, as the Federal Transit Administration Grantee, pursuant to the terms of this Agreement, will submit §5307 and §5309 grant applications to the Federal Transit Administration (“**FTA**”) for Fiscal Year 2011 with respect to obtaining funding for the PROJECT. The grant applications are, among other things, for the benefit of the CITY,

as a Subgrantee. Further, Omnitrans will prepare required or requested periodic reports to the FTA, in a timely manner so long as it receives in a timely manner all necessary information from the CITY. Omnitrans will use the funds received from the Grant Application to for the Rialto Metrolink Parking Expansion project in accordance with the terms hereof.

D. The CITY will be considered the Subgrantee for purposes of the grant agreement, and is responsible for complying with all provisions of the grants and of applicable federal, state and local laws and regulations ("Applicable Law") necessary in order to qualify for the funding for, and to undertake the PROJECT.

NOW THEREFORE, based on the forgoing recitals and the following promises and covenants the parties agree:

1. **Obligations of Omnitrans.** Pursuant to, and to the extent provided in, this Agreement, Omnitrans shall take the following actions:

a. Omnitrans, as the FTA Grantee, will submit Fiscal Year 2011 §5307 grant applications to the FTA with respect to obtaining funding for the PROJECT (\$3,200,000 in Section 5307 Funds). A portion of the §5307 grant application is for the benefit of the CITY, as a Subgrantee.

b. Omnitrans, as the FTA Grantee, will submit Fiscal Year 2011 §5309 grant applications to the FTA with respect to obtaining funding for the PROJECT (\$285,000 in Section 5309 Funds).

c. Omnitrans will sign the grant documents resulting from the foregoing grant application submittal, upon the receipt of such assurances from the CITY as Omnitrans may reasonably require.

d. Omnitrans will reimburse the CITY for the PROJECT up to the amount available from any grant received for the PROJECT, in conformity with the following procedure:

1. For each Disbursement requested, the CITY shall provide a written invoice to Omnitrans specifying the amount requested to be disbursed, the purpose of the Disbursement and such additional supporting documentation and background information as Omnitrans may reasonably require (a "Disbursement Request").

2. Each Disbursement Request shall be accompanied by a written certification of the CITY's Director of Finance that such Disbursement will not constitute any violation of the terms of the grant, or of Applicable Law, and that the CITY will use the Disbursement for the purpose indicated in the Disbursement Request.

3. Within two (2) business days of the receipt of an invoice and accompanying certification, Omnitrans shall notify the CITY as to what, if any, additional supporting documentation and background information it requires.

4. First week of the following month, after invoice submittal, OMNITRANS shall: (i) disburse (including through electronic transfer of funds, if so requested and if the CITY provides the necessary information by the date of execution of this Agreement) all or that portion of the requested funds which it reasonably believes it can disburse without violating the terms of either the grant or of Applicable Law; and (ii) if applicable, notify the CITY as to why it reasonably believes that it is unable to disburse some or all of the requested funds without violating the terms of either the grant or of Applicable Law.

5. To the extent that the FTA advises Omnitrans that a Disbursement would constitute a violation of the terms of either the grant or of Applicable Law,

Omnitrans shall have no obligation to disburse such funds. If Omnitrans has any question as to whether any disbursement will be in violation of any provision of either the grant or of Applicable Law, notwithstanding the CITY's certification, it shall be entitled to receive at CITY's expense, a legal opinion from competent counsel of its choice to resolve any such question.

6. Omnitrans shall have no liability to the CITY for any refusal to disburse funds so long as Omnitrans has a good faith and reasonable belief that such Disbursement would constitute a violation of the terms of the grant or of Applicable Law. If Omnitrans obtains a legal opinion of counsel that such Disbursement would not constitute a violation of the terms of the grant or Applicable Law, in which case the presumption shall be that Omnitrans belief was not reasonable.

e. Omnitrans shall prepare and submit to the FTA on a timely basis all required periodic reports and milestone updates, so long as it timely receives all necessary information from the CITY.

f. Omnitrans shall conduct itself so that any aspect of Omnitrans' participation in this Agreement and the actions required of it hereunder, will be in compliance with the terms of the grant which is being sought and with all Applicable Law.

g. Omnitrans shall comply with all requirements of the FTA 2010 Master Agreement, found at <http://www.fta.dot.gov/documents/16-Master.pdf>, including submission to FTA on a quarterly basis, of reports that document the status of the PROJECT'S implementation progress, including task completion status, budget status, and adherence to PROJECT.

2. **Payment of Administrative Expenses of Omnitrans.** As compensation for the obligations undertaken by Omnitrans pursuant to the terms of this Agreement, an indirect

overhead charge will be charged to the CITY to account for all administration costs associated with managing this project. Omnitrans will charge 3.27% of the total FTA amount (not to exceed \$113,960) as Administrative Expenses and will invoice CITY and payment will be taken directly from the grant. The 3.27% has been approved by FTA. If due to extraordinary circumstances it becomes evident to Omnitrans that it will exceed its estimated expenses, CITY will be immediately notified and both parties shall meet and negotiate in good faith to arrive at an agreed adjustment to Omnitrans' compensation.

3. **Warranties of the CITY.** The CITY warrants to Omnitrans that:

a. The CITY has or will have, prior to the necessity of expending them, all funds necessary to provide the local matching funds required to receive a FTA §5307 and §5309 grant (the "Match Obligation"). The approximate amount of the Match Obligation for the PROJECT is \$871,000.

b. To the CITY's knowledge, the submittal of the contemplated FTA §5307 and FTA §5309 grant applications by Omnitrans on behalf of the CITY will not constitute any violation of Applicable Law.

c. The CITY shall conduct itself so that all aspects of the PROJECT, and any aspect of the CITY's participation in this Agreement and the actions contemplated of it by this Agreement, will be in compliance with the terms of the grant and with Applicable Law, including laws or regulations related to planning studies.

d. The CITY will use the disbursements for the purpose indicated in its Disbursement Request.

e. CITY shall comply with all requirements of the FTA 2010 Master Agreement, found at <http://www.fta.dot.gov/documents/16-Master.pdf>, including submission to OMNITRANS on a quarterly basis, of reports that document the status of

the PROJECT'S implementation progress, including task completion status, budget status, and adherence to PROJECT.

f. The CITY shall agree to comply with 49 U.S.C. § 5323(j) and FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661, and any amendments thereto.

4. **Obligations of the CITY.** Pursuant to, and to the extent provided in, this Agreement, the CITY shall take the following actions:

a. Provide to Omnitrans all information that is reasonably needed for the §5307 and §5309 grant application submission.

b. Satisfy its Match Obligation and submit evidence of the dollar amount and source(s) of the funds, as Omnitrans may reasonably require. The CITY may utilize its payment of staff salaries, benefits and expenses in administrative support for the PROJECT to satisfy its Match Obligation.

c. Provide the 20% Match Obligation for the completion of the PROJECT

d. Notify Omnitrans of any changes in the scope or description of the PROJECT.

e. To claim full ownership of the project.

f. To maintain and upkeep all portions of the completed PROJECT per FTA requirements.

g. Certify to Omnitrans for each Disbursement Request, that to the best of its knowledge such Disbursement will not constitute any violation of either the provisions of the grant or of Applicable Law and that the CITY will use the Disbursement as indicated in the Disbursement Request.

h. Provide to Omnitrans all information needed for quarterly project reporting and milestone updates in a timely manner to allow Omnitrans enough time to prepare and submit to the FTA on a timely basis all required or requested FTA reports and updates, but in no event to be received later than fifteen (15) days prior to the required date of submission to the FTA of such report or update.

i. The CITY shall insure that all aspects of the PROJECT and any aspect of CITY's participation in this Agreement and the actions contemplated of it by this Agreement will be in compliance with the terms of the grant which is being sought and with all Applicable Law.

5. **Exercise of Rights under the Agreement.** The CEO/General Manager of Omnitrans, or his designee, shall exercise the rights of Omnitrans under this Agreement including, without limit, accepting the certifications of the CITY required under the terms of this Agreement. The Mayor of Rialto, or her/his designee, shall exercise the rights of the CITY under this Agreement; however, any certifications of the CITY required under the terms of this Agreement shall be provided only by the Mayor or such other representative of the CITY as is specified by action of the CITY's governing body.

6. **Insurance and bonding requirements.** The CITY shall require that any contractor providing services with respect to the PROJECT obtain and maintain insurance of the type and in the amounts that Omnitrans would require of its contractors performing similar services on a project similar to the improvements for the longer period of: 1) the duration of this Agreement or 2) for the duration of such contractor's involvement in the PROJECT. All insurance policies shall name Omnitrans and its directors, officers, employees and volunteers as additional named insured. Further, the CITY will require that any contractors provide bid and performance bonds as are required by applicable Federal, State or local law.

7. **CITY Contract Damages.** Omnitrans shall be responsible to compensate the CITY for any damage or loss which the CITY suffers by virtue of Omnitrans' breach of

any term of this Agreement, including any and all damages, loss, claims, (including reasonable attorneys fees for any action or fine of the FTA) arising from such breach.

8. **Omnitrans Contract Damages.** The CITY shall be responsible to compensate Omnitrans for any damage or loss which Omnitrans suffers by virtue of the CITY's breach of any term of this Agreement, including without limit any and all damages, loss, claims, etc. (including without limit reasonable attorneys fees for any action or fine of the FTA) arising from such breach.

9. **Term.** This Agreement shall terminate upon the rejection of any grant application for the PROJECT by the FTA or, assuming the award of the grant sought, upon the completion of the disbursement of the funds obtained from the grant and the completion of all reports, updates or any other documentation or responsibility of Omnitrans related to the grant. In all events, this Agreement shall terminate within the time limits set forth in applicable FTA procedures and regulations but in no event later than three (3) years from the date of the last grant received by Omnitrans.

10. **Force Majeure.**

a. An "Uncontrollable Force" (force majeure) is any occurrence beyond the control of a Party which causes that Party to be unable to perform its obligations hereunder and which a Party has been unable to overcome by the exercise of due diligence, including but not limited to, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strike, labor dispute, action or inaction of legislative bodies, judicial bodies, or regulatory agencies, or other proper authority, excepting the governing body of the Party asserting the Uncontrollable Force, which may conflict with the terms of this Agreement.

b. Subject to Section 9(a), neither Party shall be considered to be in default in the performance of any of the agreements contained in this Agreement when and to the extent failure of performance shall be caused by an Uncontrollable Force.

c. If either Party because of an Uncontrollable Force is rendered wholly or partly unable to perform its obligations under this Agreement, the Party shall be excused from whatever performance is affected by the Uncontrollable Force to the extent so affected provided that: (i) the nonperforming Party within one week after the occurrence of the Uncontrollable Force, gives the other Party written notice describing the particulars of the occurrence; (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Uncontrollable Force; (iii) the nonperforming Party uses its best efforts to remedy its inability to perform (this subsection shall not require the settlement of any strike, walkout, lockout, other labor disputes or any other dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its interest, it being understood and agreed that the settlement of any disputes shall be at the sole discretion of the Party having the difficulty); and (iv) when the nonperforming Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

d. If either Party's ability to perform cannot be corrected when the Uncontrollable Force is caused by the actions or inactions of legislative bodies, judicial bodies, or regulatory agencies or other property authority, the Parties agree to meet in good faith to determine if this Agreement may be amended to comply with the legal or regulatory change which caused the nonperformance if the Parties.

11. Authorization by Omnitrans. Omnitrans represents that the terms and execution of this Agreement, including all Exhibits, have been duly authorized by Omnitrans' governing Board and that the persons signing this Agreement on its behalf have the necessary authority to do so.

12. Authorization by the CITY. The CITY represents that the terms and execution of this Agreement, including all Exhibits, have been duly authorized by the CITY's

governing body and that the persons signing this Agreement on its behalf have the necessary authority to do so.

13. **Headings.** All paragraph headings throughout this Agreement are for convenience of reference only.

14. **Additional Documents.** Each of the Parties shall execute such additional documents as the other Party may reasonably request in order to carry out or implement any of the provisions of this Agreement, which request shall not be unreasonably refused.

15. **Litigation Expenses.** If after this Agreement is in effect, any action or proceeding of any nature shall be commenced seeking to enforce, construe or rescind, or otherwise relating to this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover from the other, in addition to all other sums recoverable, its reasonable litigation expenses, including reasonable attorney's fees, expert witness fees and other related expenses and costs.

16. **Entire Agreement.** This Agreement constitutes the sole and entire agreement between the parties hereto, and no modification, alteration or amendment shall be binding unless expressed in writing signed by the Parties. No representation, warranty, covenant, inducement or obligation not included in this Agreement shall be binding, and this Agreement supersedes all prior negotiations, agreements, arrangements and undertakings among the Parties hereto with respect to the matters set forth in this Agreement. It is the intent of the Parties that this Agreement is an integrated agreement and that no evidence may be introduced to vary in any manner its terms and conditions.

17. **Accuracy of Representations.** As of the date each signed this Agreement, the representations herein of both Parties are true and correct in all material respects.

18. **Originals and Copies.** This Agreement with the Exhibits attached hereto may be executed in counterparts, each of which shall be deemed an original. In any action or proceeding, an exact and correct copy may be used in lieu of an original.

19. **Construction of Agreement.**

a. **Equal Construction.** This Agreement and the Exhibits attached hereto shall not be construed in favor of or against a Party by reason of participation or lack of participation of that Party or its counsel in the drafting of this Agreement and the Exhibits attached hereto. This Agreement and the attached Exhibits shall be interpreted and construed as drafted by all Parties with equal participation in the drafting hereof.

b. **Internal Consistency.** The Parties intend that the terms of this Agreement and of the Exhibits are all internally consistent with each other and should be construed to that end. If any irreconcilable inconsistency shall be determined between the terms of this Agreement and the terms of any of the Exhibits attached hereto, the terms of this Agreement shall control over the terms of any of the Exhibits.

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

**Attention:** Nancy Strickert

City of Rialto

CITY OF RIALTO

150 S. Palm Avenue

Rialto, California 92376

Attention: Saba Engineer

21. No Third Party Beneficiaries There are no third party beneficiaries to this Agreement. Other than the Parties, no person, political subdivision, agency, board, department, division or commission shall be entitled to bring an administrative or judicial proceeding to enforce or interpret its terms.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year first written above.

OMNITRANS

CITY OF RIALTO

By: Milo Victoria

By: \_\_\_\_\_

Milo Victoria, CEO/General Manager

Grace Vargas, Mayor

Date: 2-2-11

Date: \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: Carol Treese

By: \_\_\_\_\_

Legal Counsel for Omnitrans

City Attorney

Date: February 2, 2011

Date: \_\_\_\_\_