

**CITY OF MONTCLAIR
PASSENGER AMENITY PROGRAM AGREEMENT**

BY AND BETWEEN

OMNITRANS
1700 W. FIFTH ST.
SAN BERNARDINO CA 92411

AND

CITY OF MONTCLAIR
5111 BENITO STREET
MONTCLAIR, CA 91763

1. **Parties and Date.** This Passenger Amenity Program Agreement ("Agreement") is made and entered into this 1/9/19 day of ~~August, 2018~~ by and between Omnitrans, a California Joint Powers Authority ("Omnitrans"), and the City of Montclair, a California municipal corporation ("City"). Omnitrans and City are also referred to herein individually as "Party" and collectively as "Parties."
2. **Recitals**
 - 2.1 **Purpose**
 - 2.1.1. Omnitrans is a provider of public mass transportation for the San Bernardino Valley, and has the professional ability to administer programs to install and maintain bus shelters and other passenger Amenities in cities. Omnitrans represents that it is experienced in providing such services to public clients.
 - 2.1.2. The Parties recognize that upgraded, well-maintained bus stops and Amenities benefit City residents, the City's business community, and transit riders region-wide.
 - 2.1.3. The Parties desire that by this Agreement, Omnitrans shall have the right to provide bus stop Amenities within boundaries of City, and in exchange, will receive all revenue, including advertising, from such Amenities.
 - 2.1.4. The Parties agree that if City, property developer, or property owner installs bus stop Amenities separate from the Amenities that Omnitrans installs (of which Omnitrans does not agree to take ownership), Omnitrans does not bear the responsibility to maintain those Amenities and shall have no liability for such Amenities.
 - 2.2. **Definition of Amenities.** The definition of "Amenities" as used throughout this Agreement may include, but not be limited to: shelters, benches, lean bars, trash receptacles, customer information signage (physical or electronic signage), advertising panels (static or digital), solar panels, lighting, security systems, and bicycle racks.

2.3. **Program.** City desires to engage Omnitrans to administer a comprehensive Passenger Amenities Program ("Program") at current and future bus stops throughout the City as set forth in this Agreement.

3. **Responsibilities under Agreement**

3.1 **Scope of Services**

3.1.1 **General Scope of Services.** The City grants Omnitrans the right to administer the Program at current and future bus stops throughout the City. Omnitrans may use a contractor(s) to perform the construction and maintenance services ("Contractor") in connection with the Program ("Services") at current and future bus stops within the City.

3.1.2 **Placement of Amenities.** Omnitrans will place Amenities based upon the guidance outlined in Omnitrans' Transit Design Guidelines (2013). The placement of Amenities based on such Guidelines, ridership, funding availability and other determined needs shall be mutually agreed upon by City and Omnitrans.

3.1.3 **Availability of Sidewalk Space.** The availability of flat concrete sidewalk space on which Amenities can be installed (10' by 25' for shelters) is also crucial to installation of shelters. Omnitrans will partner with City to pursue funding whenever possible for installation of concrete improvements or accessibility improvements needed for installing Amenities at bus stops.

3.1.4 **Shelter Design.** Omnitrans shall ensure that bus shelters in the City are constructed in accordance with all applicable Americans with Disabilities Act ("ADA") guidelines, as well as other guidance laid out in Omnitrans' Transit Design Guidelines (2013).

3.1.5 **Shelter Types.** Shelter types include but are not limited to the following (examples are shown in Attachment A):

3.1.5.1 Standard blue or green Omnitrans shelter (13' or 17' length), which typically includes a trash receptacle, bench, advertising panel, map case/customer information, and solar-powered lighting.

3.1.5.2 Premium silver Omnitrans logo shelter (17' length), which typically includes a trash receptacle, bench, advertising panel, map case/customer information, solar-powered lighting, electronic real-time information sign, and bike rack.

3.1.5.3 The specific type of shelter to be used for each location shall be determined by mutual agreement of the parties.

3.1.6 **Maintenance and Cleaning.** Omnitrans shall maintain all Amenities in good repair and order throughout the term of this Agreement. Any graffiti shall be removed within forty-eight (48) hours of discovery by Omnitrans or notification by the City and in compliance with City's graffiti abatement ordinance. Omnitrans

shall wash all shelters within the City not less than once per month, clean the 15' radius of the shelters not less than once a week, and clean the benches not less than once per week. In addition, upon notification by City of any issue involving safety or cleanliness at a bus stop, Omnitrans will address the issue within forty-eight (48) hours of notification by City, or sooner if it presents an immediate safety hazard.”

- 3.1.7 Amenities - Waste Receptacles.** Omnitrans will place and maintain trash receptacles at all existing and future amenity locations, empty waste receptacles at least once per week, clean at least once a month, and add trash receptacles as required by law or as mutually agreed to by Omnitrans and the City based on use and identified need. Omnitrans will perform more frequent disposal of waste and cleaning of receptacles if mutually agreed by City and Omnitrans that it is required to maintain an aesthetically safe, clean, and healthy appearance for a specific amenity location.
- 3.1.8 Relocation or Removal.** The City, in its sole discretion and at its expense may require the relocation or removal of any shelter if the physical surroundings or use of the shelter poses a threat to the public health or safety. In such case, Omnitrans shall be responsible for arranging for such relocation or removal. In all other cases, Omnitrans in its sole discretion and expense may remove and/or relocate any bus shelter for its operational convenience. Any new location shall be agreed upon by the Parties.
- 3.1.9 Advertising/Public Service Announcements.** At a minimum, two (2) advertising panels within the City’s boundaries shall be made available for the City’s use for public service announcements.
- 3.1.10 Electronic Advertising panels.** Electronic advertising panels may be used in future shelter designs, upon approval by City and if in compliance with the City’s municipal code.
- 3.1.11 Advertising Content.** Per the provisions of Omnitrans’ contract with its advertising provider, Omnitrans does not permit, under any circumstances, any advertisement that violates any federal, state, county, or local regulation, law, code, or ordinance; is or can be construed to be false, misleading, deceptive or libelous; contains copyright infringement; contains an endorsement by Omnitrans without prior written authorization; contains sexual or adult-oriented content according to contemporary community standards, obscenity, or nudity; depicts unlawful or detrimental conduct or advertises unlawful goods or services; demeans or disparages an individual or group based on race, color, religion, national origin, ancestry, gender, age, disability, or sexual orientation; contains images or descriptions of or incites violence; contains images of firearms in the foreground or making up 15% or more of the advertisement, profanity, alcohol,

tobacco, graffiti, inappropriate graphics, political or religious information. All advertisements that contain content or have a presentation that is objectionable, as so deemed by either Omnitrans or the City, will be removed from affected Amenities within 48 hours, regardless of prior approvals, at Omnitrans' or its Contractor's expense (based on the provisions of Omnitrans' contract with its advertising provider).

- 3.1.12 Approval by City.** Omnitrans and the City shall work cooperatively to identify bus shelter locations. No new bus shelter may be placed without first obtaining all necessary approvals and permits by the City and any other person/entity having ownership or jurisdiction of the bus shelter location. Omnitrans shall be required to apply for a "no fee" permit from City to install a shelter. Omnitrans' permit application shall be promptly reviewed and approved by the City if no objection is raised by the City.
- 3.1.13 Duty to Inform Public.** Omnitrans shall make every practicable effort to inform the community of the mechanisms in place for the public to report problems concerning the bus shelters and maintenance needs, which at a minimum is to provide contact information affixed to the shelter.
- 3.1.14 Loitering.** City will allow Omnitrans to install No Loitering signs at bus stops, which will assist Omnitrans in addressing vagrancy at the bus stops. City staff will meet with Omnitrans staff to discuss the possibility of the City passing an ordinance against loitering at bus stops that complies with applicable laws and regulations.
- 3.1.15 Ownership.** During the term of this Agreement, all shelters and amenities installed by Omnitrans shall remain the property of Omnitrans.
- 3.2 Term.** This Agreement shall have no date of termination unless terminated by the Parties, as provided herein.
- 3.3 Responsibilities**

 - 3.3.1** The Services included in this Agreement shall be performed by Omnitrans and/or its Contractor(s) or any other subcontractor under the Contractor's direct supervision.
 - 3.3.2** Omnitrans and its Contractors retain the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Omnitrans or its Contractor(s) shall at all times be under the direction and control of its employer. Omnitrans shall require Contractor to execute contracts for the benefit of the City and Omnitrans, releasing and indemnifying the City and Omnitrans from all costs, expenses and liabilities arising from Contractor's negligent performance of the services.

- 3.3.3 **Conformance to Applicable Requirements.** All work performed in connection with this Agreement shall comply with all federal, state, and local laws.
- 3.3.4 **City's Representative.** The City hereby designates the City Manager or his designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all proposed work under this Contract. Omnitrans shall not accept direction or orders from any person other than the City's Representative or his or her designee.
- 3.3.5 **Omnitrans' Representative.** Omnitrans hereby designates the Omnitrans Stops and Stations Supervisor, to act as its representative for the performance of this Agreement ("Omnitrans' Representative"). Omnitrans' Representative shall have the authority to represent and act on behalf of Omnitrans for all purposes under this Agreement. Omnitrans' Representative shall supervise and direct the Services, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures for the satisfactory coordination of all portions of the Program and Services under this Agreement.
- 3.3.6 **Substitution of Key Personnel.** Omnitrans or City may substitute other personnel of at least equal competence in the place of the authorized Representative or other key personnel who are responsible for fulfilling the responsibilities within this Agreement with written notice to the other Party in accordance with this Agreement.
- 3.3.7 **Coordination of Services.** Omnitrans agrees to work with City staff in the performance of the Program and Services, and each Party's representative shall be available to the other at reasonable times with reasonable notice.

3.4 Insurance

- 3.4.1 **Minimum Requirements.** Omnitrans and/or its Contractor(s) shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by Omnitrans, its agents, representatives, employees or Contractor(s) and its subcontractors. Omnitrans shall also require any Contractor(s) to include contract provisions requiring that all subcontractors of the Contractor shall procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the minimum levels of coverage as described below.
- 3.4.2 **Minimum Scope of Insurance.** Coverage shall be at least as broad as the latest version of the following: (1) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) Automobile Liability: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) Workers' Compensation and Employer's Liability: Workers'

Compensation insurance as required by the State of California and Employer's Liability Insurance. The City shall be named as an additional insured for all such coverage, where possible, and be provided with applicable endorsements as more particularly described below.

- 3.4.3 Minimum Limits of Insurance.** Coverage shall be at least: (1) General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage; and (3) Workers' Compensation and Employer's Liability: Worker's Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease. The City shall be named as an additional insured for all such coverage, where possible, and be provided with applicable endorsements as more particularly described below.
- 3.4.4 Insurance Endorsements.** The insurance policies shall contain the following provisions, or Omnitrans or its Contractor(s) shall provide endorsements on forms supplied or approved by the City, to add the following provisions to the insurance policies:
- 3.4.5 General Liability.** The general liability policy shall be endorsed to state that: (1) the City, and Omnitrans, and their directors, officials, officers, employees, agents and volunteers shall be covered as additional insured with respect to the Work or operations performed by or on behalf of the Contractor, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance with respect to the City and Omnitrans, and their directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's or any subsequent Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the Omnitrans or the City, or their directors, officials, officers, employees, agents and volunteers shall be excess of Contractor's or any subsequent Contractor's insurance and shall not be called upon to contribute with it in any way.
- 3.4.6 Automobile Liability.** The automobile liability policy shall be endorsed to state that: (1) Omnitrans, the City, and their directors, officials, officers, employees, agents and volunteers shall be covered as additional insured's with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Contractor; and (2) the insurance coverage shall be primary insurance with respect to Omnitrans or the City, and their directors, officials, officers, employees, agents and volunteers, or

if excess, shall stand in an unbroken chain of coverage excess of the Contractor scheduled underlying coverage. Any insurance or self-insurance maintained by Omnitrans or the City, and their directors, officials, officers, employees, agents and volunteers shall be excess of the Contractors insurance and shall not be called upon to contribute with it in any way.

- 3.4.7 Worker's Compensation and Employers Liability Coverage.** The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by Omnitrans or its Contractor(s), or any other Contractor or subcontractor performing work pursuant to this Agreement.
- 3.4.8 All Coverages.** Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to Omnitrans and the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to Omnitrans or the City, their directors, officials, officers, employees, agents and volunteers.
- 3.4.9 Separation of Insureds; No Special Limitations.** All insurance required by this Section shall contain standard separation of insured's provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to Omnitrans or the City, its directors, officials, officers, employees, agents and volunteers.
- 3.4.10 Deductibles and Self-Insurance Retentions.** Any deductibles or self-insured retentions must be declared to Omnitrans and the City. Omnitrans or its Contractor(s) shall guarantee that the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Omnitrans or the City, and their directors, officials, officers, employees, agents and volunteers.
- 3.4.11 Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating no less A-VII, licensed to do business in California.
- 3.4.12 Verification of Coverage.** The Contractor shall furnish to Omnitrans and City original certificates of insurance and endorsements effecting coverage required by this Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf and shall be on forms satisfactory to Omnitrans. The City reserves the right to require complete copies of all required insurance policies, at any time.
- 3.5 Compensation.** Omnitrans shall receive no monetary compensation or reimbursement from the City for the Program and the Services rendered under this Agreement. Except as provided elsewhere in this Agreement,

the Program and Services are to be provided at no cost to the City. Omnitrans and the City acknowledge that all advertising revenue generated by the shelters shall be the sole property of Omnitrans and agree the right to such revenues is sufficient consideration for the performance of Omnitrans' obligations hereunder.

4. General Provisions

4.1 Termination of Agreement.

4.1.1 Grounds for Termination. Either Party may, by written notice to the other, terminate this Agreement in whole or in part, by giving written notice of such termination and specifying the reasons for such termination and the effective date thereof, at least thirty (30) days before the effective date of such termination. The non-terminating Party has the right to request a meeting to discuss such termination before its effective date.

4.1.2 Removal of Shelters. If this Agreement expires, or is terminated by either party, Omnitrans shall request from City within ten (10) days a license agreement for each location for which Omnitrans seeks to keep the Amenities in support of public transportation services, which request will be reasonably considered and expedited by City. Omnitrans shall remove, at Omnitrans' sole cost and expense within thirty (30) days from notification of denial of a request for a license agreement, if applicable, and following any meeting in accordance with Section 4.1.1 above, Amenities installed or maintained by Omnitrans pursuant to this Agreement and which have not had a license agreement or other permit approved. The premises upon which the shelters were installed shall be restored to their prior condition at the expense of Omnitrans. Any shelters or other Amenities not removed by Omnitrans within the notice period shall, at the option of the City, become the property of the City or shall be removed at the expense of Omnitrans and disposal or reuse as the City sees fit.

4.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

Omnitrans: Attn: Director of Marketing & Planning
Omnitrans
1700 West Fifth Street
San Bernardino, CA 92411

City: Attn: City Manager
5111 Benito St
Montclair, CA 91763

Such notice shall be deemed made when personally delivered or when mailed, twenty-four (24) hours after deposit in the U.S. Mail,

first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

- 4.3 Cooperation; Further Acts.** The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.
- 4.4 Attorneys' Fees.** If either Party commences an action against the other Party, whether legal, administrative or otherwise, arising out of or in connection with this Agreement, neither Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorneys' fees and all other costs of such action.
- 4.5 Indemnification.** Omnitrans shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any actual or alleged acts, omissions or willful misconduct of Omnitrans, its officials, officers, employees, agents, Contractors and subcontractors arising out of or in connection with the performance of, the Program, Services or this Agreement. City shall defend, indemnify and hold Omnitrans, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any actual or alleged acts, omissions or willful misconduct of City, its officials, officers, employees, agents, Contractors and subcontractors arising out of or in connection with the performance of, the Program, Services or this Agreement.
- 4.6 Entire Agreement.** This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.
- 4.7 Governing Law.** This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County.
- 4.8 Time of Essence.** Time is of the essence for each and every provision of this Agreement.
- 4.9 Successors and Assigns.** This Agreement shall be binding on the successors and assigns of the Parties
- 4.10 Construction, References, and Captions.** Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and

not workdays. All references to Omnitrans include all personnel, employees, agents, and Contractors of Omnitrans, except as otherwise specified in this Agreement. All references to City include its officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

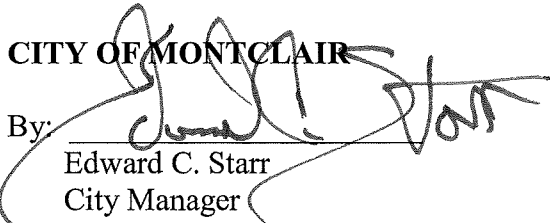
- 4.11 Amendment and Modification.** No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.
- 4.12 Waiver.** No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. 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.
- 4.13 No Third Party Beneficiaries.** There are no intended third party beneficiaries of any right or obligation assumed by the Parties.
- 4.14 Invalidity and Severability.** If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 4.15 Prohibited Interest.** Omnitrans warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Omnitrans, to solicit or secure this Agreement. Further, Omnitrans warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Omnitrans, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipate material benefit arising there from.
- 4.16 Equal Opportunity Employment.** Omnitrans represents that it is an equal opportunity employer and it shall not discriminate against any contractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities relate to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Omnitrans shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

- 4.17 Labor Certification.** By its signature hereunder, Omnitrans certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.
- 4.18 Authority to Enter Agreement.** Omnitrans has all requisite power and authority to conduct its business and to execute, deliver, and perform this Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.
- 4.19 Counterparts.** This Agreement may be signed in counterparts, each of which shall constitute an original.
- 4.20 Assignment.** Omnitrans shall have the right to assign all or part of this Agreement upon consent of the City, which consent shall not be unreasonably withheld.

[SIGNATURES ON NEXT PAGE] *


SIGNATURE PAGE TO PASSENGER AMENITY PROGRAM AGREEMENT

CITY OF MONTCLAIR

By: 
Edward C. Starr
City Manager

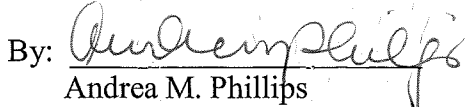
Dated: 8-20-2018

OMNITRANS


By: 
P. Scott Graham
CEO/General Manager

Dated: 1/9/19

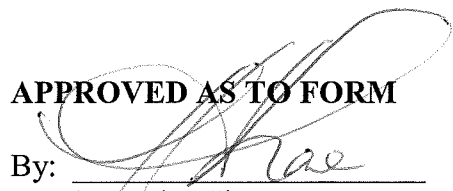
ATTEST

By: 
Andrea M. Phillips
City Clerk

APPROVED AS TO FORM

By: 
Diane E. Robbins
City Attorney

APPROVED AS TO FORM

By: 
A. Haviva Shane
Omnitrans Legal Counsel

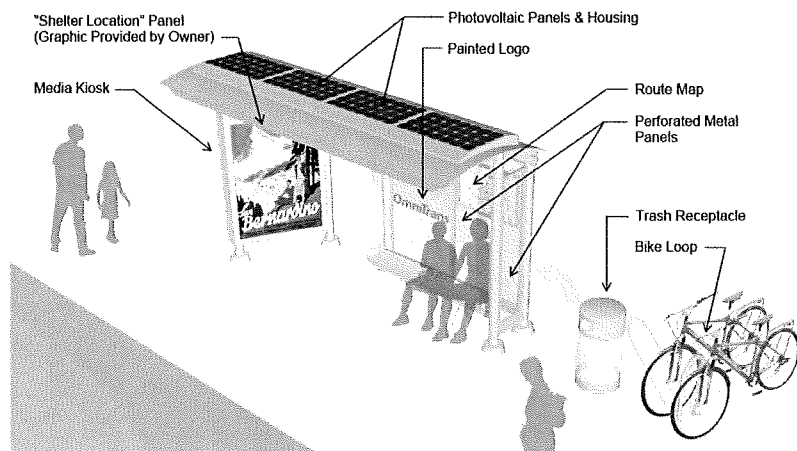
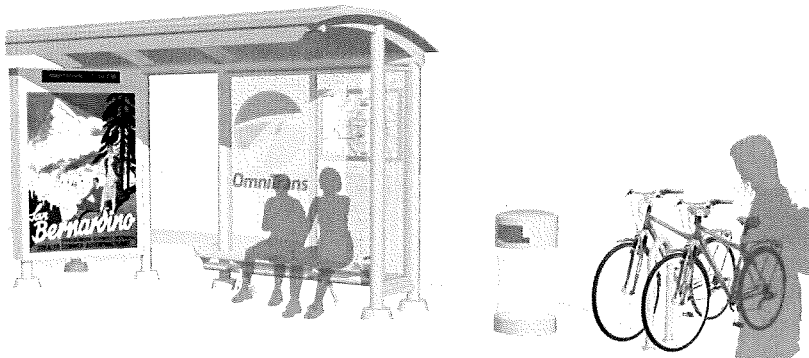
ATTACHMENT A

Examples of shelters and amenities

Basic Shelter



Premium Shelter



Premium Shelter with Digital Ad Panel (Future Option)

