



**ADMINISTRATIVE & FINANCE MEETING
APRIL 11, 2019
SUPPLEMENTAL INFORMATION**

ITEM #E5 – ADVERTISING AND DESIGN – CONTRACT MKP19-19



CONTRACT AGREEMENT

between

CONSULTANT)
Celtis Ventures, Inc.)
215 Avenue I, Suite 104)
Redondo Beach, CA 90277)

(hereinafter "CONSULTANT"))
Contact: Matt Raymond, President)
Telephone: 310-374-7570 ext. 101)
Email: matt@celtis.com)

And)

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

CONTRACT DOCUMENTS

CONTRACT NO. MKP19-19

Advertising and Design Services

Contract Amount: \$2,018,114

Omnitrans Project Manager:

Name: Wendy Williams

Title: Director of Marketing

Telephone: (909) 379-7151

Email:

wendy.williams@omnitrans.org

Contract Administrator:

Name: Christine Van Matre

Title: Contract Administrator

Telephone: (909) 379-7122

Email:

christine.vanmatre@omnitrans.org



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ATTACHMENT A – SCOPE OF WORK

ATTACHMENT B – PRICING SCHEDULE

ATTACHMENT C – PROHIBITING WEAPONS IN THE WORKPLACE

This Agreement is made and entered into as of this 1st day of July, 2019, by and between Omnitrans (hereinafter referred to as "OMNITRANS") and Celtis Ventures, Inc. (hereinafter referred to as "CONSULTANT").

RECITALS

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

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

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

1. SCOPE OF WORK

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

2. PERIOD OF PERFORMANCE

The term of this Agreement shall be from the date of execution of this Agreement and continue in effect through June 30, 2022, unless terminated as specified in Section 10 and 11 of this Agreement. Omnitrans has no obligation to purchase any specified amount of products/services. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

Omnitrans' election to extend the Agreement beyond the Initial Term shall not diminish its right to terminate the Agreement for Omnitrans' convenience or CONSULTANTS default as provided elsewhere in this Agreement. The "maximum term" of this Agreement shall be the period extended from July 1, 2022 through June 30, 2024, which period encompasses the Initial Term and the Option Year One and Option Year Two.

3. CONTRACT OPTIONS

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

4. COMPENSATION

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

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Two Million Eighteen Thousand One Hundred Fourteen Dollars (\$2,018,114), including all amounts payable to CONSULTANT for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

5. INVOICING AND PAYMENT

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

CONSULTANT shall submit invoices in duplicate to:

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

Accountspayable@omnitrans.org

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

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

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

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

- C. TITLE

a. Title shall pass to Omnitrans at the time of payment.

b. The title transferred as above shall in each case be good, and free and clear from any and all security interests, liens, and/or other encumbrances.

c. The transfer of title as specified above shall not imply Acceptance by Omnitrans, nor relieve the Consultant from the responsibility for strict

compliance with the Contract, including warranty as specified in the Article entitled Warranty of Work, and for any loss of or damage to the Work.

d. The Consultant at its own expense shall promptly execute, acknowledge, and deliver to the Omnitrans proper bills of sale or other written instruments of title in a form as required by Omnitrans; said instruments shall convey to the Omnitrans' title free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances.

e. Consultant shall have title to and bear the risk of any loss of or damage to Work purchased hereunder until they are delivered, unloaded, and received by Omnitrans at the FOB Destination specified herein. Consultant's responsibility for loss or damage except for loss or damage resulting from Consultant's negligence, shall cease when title passes to Omnitrans.

6. AUDIT AND INSPECTION OF RECORDS

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

7. NOTIFICATION

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

To OMNITRANS:

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

To CONSULTANT:

Celtis Ventures, Inc.
215 Avenue I, Suite 104
Redondo Beach, CA 90277
Attn: Matt Raymond, President/CEO
and Laura Raymond, COO/CFO

8. OMNITRANS' AND CONSULTANT'S REPRESENTATIVES

A. OMNITRANS' Project Manager

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

Project Manager: Wendy Williams, Director of Marketing

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

B. Consultant's Key Personnel

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

<u>Name</u>	<u>Role</u>	Phone: (310) 374-7570
Susana Andres	Project Manager	ext. 114
Sandra Gonzalez	Project Coordinator	ext. 107

Emily Kirwan	Digital Marketing Dir.	ext. 115
Rachel Lehn	Digital Marketing Mgr.	ext. 105
Georgina Artiga	Art Director	ext. 109
Carolina Chavez	Graphic Designer	ext. 106
James Ewing	Web Development Dir.	ext. 110
Patrick Tirschel	On-Call Web Support	ext. 116
Cristina Bonnici	Video Production Mgr.	ext. 102
Nicole Bonnici	Video Production Coord.	ext. 108
Matt Raymond	President	ext. 101
Brionna Simons	Marketing Dir.	ext. 117
Devon Cichoski	CCO PR Relations	ext. 103
Lindsey Raymond	Account Exe. Outreach	ext. 118

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

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

9. DISPUTE RESOLUTION

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

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

- D. Pending final resolution of a dispute under this section, proposer shall proceed diligently with performance in accordance with the Contract and Omnitrans' CEO/General Manager's recommended decision.

10. TERMINATION FOR CONVENIENCE

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

11. TERMINATION FOR BREACH OF AGREEMENT

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

- F. If, after notice of termination of this Agreement under the provisions of this Section, it is determined for any reason that CONSULTANT was not in default under the provisions of this Section, or that the default was excusable under the terms of this Agreement, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 10, Termination for Convenience.
- G. The rights and remedies of OMNITRANS provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

12. ASSIGNMENT

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

13. SUBCONTRACTING

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

CONSULTANT shall not, without the express written consent of Omnitrans, either:

- a. Substitute any person, firm, or corporation as subconsultant in place of the subconsultants identified below; or
- b. Permit any subcontract to be assigned or transferred; or
- c. Allow work to be performed by anyone other than the original subconsultant listed below.

Subconsultant’s Name and Address

Work to Be Performed

N/A

14. INDEPENDENT CONSULTANT

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

15. INSURANCE

A. INSURANCE REQUIREMENTS

1) General Requirements for Consultant

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

2) Deductibles or Self-Insured Retention (SIR)

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

3) Other Insurance Provisions

a. Commercial General Liability and Automobile Liability

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury covering claims which may arise from or out of Consultant's performance of its obligations hereunder and if Consultant's vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then Consultant shall maintain liability insurance for all owned, non-owned or hired vehicles so used. Policy shall name Omnitrans, its officers, officials, employees, agents and volunteers as additional insured as respects: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned, occupied or

used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations of the scope of protection afforded Omnitrans, its officers, officials, employees, agents, and volunteers.

1. For any claims related to this project, Consultant's insurance coverage shall be primary insurance as respects Omnitrans, its officers, officials, employees, agents, and volunteers. Any insurance and/or deductibles and/or self-insured retentions or self-insured programs maintained by Omnitrans, its officers, officials, employees, agents, and volunteers shall be excess of Consultant's insurance and shall not be construed as contributory.
2. Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to Omnitrans.

b. Workers' Compensation

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

c. Care, Custody, and Control

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

4) Acceptability of Insurers

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

5) Verification of Coverage

- a. Consultant shall furnish Omnitrans with original endorsements affecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage

on its behalf. All insurance certificates and endorsements are to be received and approved by Omnitrans before work commences.

- b. As an alternative, Consultant's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.
- c. In lieu of purchasing insurance and providing original endorsements and or certificates of insurance, the Consultant may provide proof of self-insurance; such proof must be to the satisfaction of Omnitrans.

6) Subconsultants

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

7) Notification of Terminated Insurance

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

B. MINIMUM INSURANCE COVERAGE

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

- 1) **Commercial General Liability including Products/Completed Operations:** \$1,000,000; per occurrence for bodily and property damage liability and \$2,000,000 aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- 2) **Advertising and Personal Injury:** \$2,000,000 per occurrence and aggregate; Omnitrans named and endorsed as Additional Insured.
- 2) **Automobile Liability:** \$1,000,000; per occurrence for bodily and property damage liability and aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- 3) **Errors and Omissions Liability:** \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$ 3,000,000 aggregate or,
- 4) **Professional Liability:** \$1,000,000; per occurrence and aggregate.

- 5) **Workers' Compensation:** statutory limits or,
- 6) **Self Insurance Program:** a State Approved program in an amount and form that meets all applicable requirements of the Labor Code of the State of California.
- 7) **Employer's Liability:** \$1,000,000; per occurrence.
- 8) **Environmental Liability:** \$1,000,000; per occurrence and aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- 9) **Umbrella Policy:** \$4,000,000; per occurrence and aggregate Additional coverage for the above policies, *Omnitrans Additional Insured.*
- 10) All drivers making deliveries of products specified on this solicitation shall have Hazardous Materials Endorsements on their Commercial Drivers License, and such other Endorsements as may be required by relevant laws and/or regulations.

16. INDEMNITY

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

17. REVISIONS IN SCOPE OF WORK

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

18. RIGHTS IN TECHNICAL DATA

A. No material or technical data prepared by CONSULTANT under this Agreement is to be released by CONSULTANT to any other person or entity except as necessary for the performance of the Work. All press releases or information concerning the Work that might appear in any publication or dissemination, including but not limited to, newspapers, magazines, and electronic media, shall first be authorized in writing by OMNITRANS.

- B. The originals of all letters, documents, reports and other products and data produced under this Agreement shall become the property of OMNITRANS without restriction or limitation on their use and shall be made available upon request to OMNITRANS at any time. Original copies of such shall be delivered to OMNITRANS upon completion of the Work or termination of the Work. CONSULTANT shall be permitted to retain copies of such items for the furtherance of its technical proficiency; however, publication of this material is subject to the prior written approval of OMNITRANS. The provisions of this paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.

19. OWNERSHIP OF REPORTS AND DOCUMENTS

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

20. OWNERSHIP RIGHTS

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

- B. All documentation and Software which predates this Contract and which otherwise owned by Consultant or its Third Party Software Consultants, and all Documentation and Software which is created by Consultant or its Third Party Software Consultants shall be Licensed Software or Licensed Documentation, as appropriate. All Licensed Software and Licensed Documentation shall be governed by the License Agreement by and between the parties of event date herewith.

21. WORK FOR HIRE

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

22. SUBMITTAL OF CLAIMS BY CONSULTANT

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

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

23. EQUAL OPPORTUNITY

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

24. STANDARD OF PERFORMANCE

- A. CONSULTANT shall perform and exercise, and require its subconsultants to perform and exercise due professional care and competence in the performance of the Work in accordance with the requirements of this Agreement. CONSULTANT shall be responsible for the professional quality, technical accuracy, completeness and coordination of the Work, it being understood that OMNITRANS will be relying upon such professional

quality, accuracy, completeness and coordination in utilizing the Work. The foregoing obligations and standards shall constitute the "Standard of Performance" for purposes of this Agreement. The provisions of this paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.

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

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

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

26. DISQUALIFYING POLITICAL CONTRIBUTIONS

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

27. COMPLIANCE WITH LAW

- A. CONSULTANT shall familiarize itself with and perform the Work required under this Agreement in conformity with requirements and standards of OMNITRANS, municipal and public agencies, public and private utilities, special districts, and railroad agencies whose facilities and work may be affected by Work under this

Agreement. CONSULTANT shall also comply with all Federal, state and local laws and ordinances.

- B. Government regulations that directly affect the CONSULTANT'S performance of this contract and unforeseen impacts, which neither party could have contemplated at the onset of the contract and have an unconscionable impact on the CONSULTANT may be given special pricing consideration. The parties, in good faith, shall review established rates and may adopt any mutually agreed new rates, which shall only be effective as agreed upon by the parties. Thorough documentation including all cost elements is required to support the Consultant's claim to any relief under this clause.

28. COMPLIANCE WITH LOBBYING POLICIES

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

29. PUBLIC RECORDS ACT

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

- C. In the event of litigation concerning the disclosure of any material submitted by CONSULTANT, OMNITRANS' sole involvement will be as a stake holder, retaining the material until otherwise ordered by a court. CONSULTANT, at its sole expense and risk, shall be responsible for prosecuting or defending any action concerning the materials, and shall defend, indemnify and hold OMNITRANS harmless from all costs and expenses, including attorneys' fees, in connection with such action.

30. WAIVER/INVALIDITY

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

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

31. FORCE MAJEURE

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

32. CONFIDENTIALITY

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

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

- A. OMNITRANS shall review and approve in writing all OMNITRANS related copy proposed to be used by CONSULTANT for advertising or public relations purposes prior to publication. CONSULTANT shall not allow OMNITRANS related copy to be published in its advertisements and public relations programs prior to receiving such approval. CONSULTANT shall ensure that all published information is factual and that it does not in any

way imply that OMNITRANS endorses CONSULTANT's firm, service, and/or product.

- B. CONSULTANT shall refer all inquiries from the news media to OMNITRANS and shall comply with the procedures of OMNITRANS' Public Affairs staff regarding statements to the media relating to this Agreement or the Work.
- C. If CONSULTANT receives a complaint from a citizen or the community, CONSULTANT shall inform OMNITRANS as soon as possible and inform OMNITRANS of any action taken to alleviate the situation.
- D. The provisions of this Article shall survive the termination or expiration of this Agreement.

34. GOVERNING LAW

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

35. MODIFICATIONS TO AGREEMENT

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

36. LICENSING, PERMITS AND INSPECTION COSTS

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

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

37. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, and any and all of its Amendments, Appendices, Exhibits and Attachments; (2) provisions of RFP-MKP19-19 and any and all of its Addenda, Appendices, Exhibits and Attachments; and (3) CONSULTANT's proposal dated February 11, 2019 and its Appendices, Exhibits, Attachments and Best & Final Offer dated March 21, 2019.

38. ENTIRE AGREEMENT

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

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

OMNITRANS

CONSULTANT

P. Scott Graham
CEO/General Manager

Matt Raymond
President

Date

Date

Federal Tax I.D. No. 46-4473426

CM _____

ATTACHMENT A – SCOPE OF WORK
MKP19-19
ADVERTISING AND DESIGN SERVICES

1. INTRODUCTION, BACKGROUND, AND BUDGET

A. Introduction

- 1) Consultant shall provide Advertising and Design Services to assist Omnitrans' Marketing Department in meeting its marketing goals.
- 2) Consultant shall provide all of the requirements stated herein. The requirements include, without limitation, providing professional creative and graphic design services; website design and maintenance; media analysis, production, and buying services; and advertising services. The required services include, without limitation, providing everything necessary to:
 - a) Develop and implement advertising campaigns as required by Omnitrans to meet its marketing goals and objectives;
 - b) Prepare, coordinate, design, and produce the graphics required for use in Omnitrans' advertising;
 - c) Develop and/or adhere to brand guidelines established for Agency services and programs;
 - d) Produce printed collateral, radio/television commercials, digital images, and other promotional materials;
 - e) Identify and match specific media and messages suitable for target markets;
 - f) Track, quantify, and evaluate the results and the effectiveness of promotional efforts;
 - g) Seek out, analyze, negotiate with, retain the services of, coordinate with, buy time from, and pay for media specialist firms as required by Omnitrans to advertise;
 - h) Serve as webmaster for www.omnitrans.org, providing web hosting service, ongoing site maintenance and updates as well as future enhancements;
 - i) Perform all other tasks necessary to provide comprehensive advertising and design services, in the time required for up to a five-year period.
- 3) Omnitrans retains rights to manage its advertising sales and services program for transit vehicles, shelters and stations, print buying, public relations, market research, social media and community outreach activities.

B. Budget

- 1) While these amounts are budgeted, the figures supplied herein are not to be construed as a commitment on behalf of Omnitrans to spend these amounts with the awarded firm.
- 2) The Fiscal Year (FY) 2019-2020 Budget allocation projection is \$675,000.00 for:
 - a) **Advertising Agency Fees:** Includes gross media charges including commission rates, graphic design, creative direction, account management, website design and maintenance, and direct costs related to print, digital, radio and TV/video production, photography, etc.
 - b) **Local Media:** Occasionally, Omnitrans may elect to contract directly with local newspapers and other print media for advertising. This expense is not included in budget above.
 - c) **Print Production:** Omnitrans may elect to contract directly with printing vendors for printing of advertising materials. This expense is not included in budget above.
- 3) Subsequent year allocations will be determined during Omnitrans' annual budgeting process.

2. PROJECT OBJECTIVES

- A. Consultant to assist Omnitrans in development of a coordinated marketing effort through branding, advertising, collateral materials and the Agency website.
- B. Increase ridership among current riders, attract new riders, and increase overall market share for Omnitrans compared to other transportation modes.
- C. Increase sales of prepaid fare media including mobile fares.
- D. Enhance community awareness of Omnitrans.
- E. Enhance the image of Omnitrans.
- F. Provide accurate, timely, understandable, and accessible information about Omnitrans' services.

3. SCOPE OF WORK

A. Consultant shall assist Omnitrans in:

- 1) Creating and overseeing production of advertising materials suitable for print publication, radio, television, movie theater, outdoor and online advertising.
- 2) Creating and overseeing production of printed materials, including informational and promotional collateral items such as brochures, flyers, and posters for marketing campaigns.
- 3) Developing and maintaining branding for Agency services and programs.
- 4) Maintaining and enhancing Omnitrans' public website: www.omnitrans.org
- 5) Negotiating partnership/trade agreements with community partners such as but not limited to local sports franchises.
- 6) Effectively reaching population segments with Limited English Proficiency, including but not limited to Spanish speakers.
- 7) Analyzing and selecting appropriate media to reach target markets.
- 8) Utilizing Omnitrans' resources efficiently and effectively to achieve marketing goals.
- 9) Tracking, quantifying, and evaluating results and effectiveness of promotional efforts.

B. Consultant shall:

- 1) Provide, at its sole expense, all services that are necessary to fulfill the requirements of this scope of work, including tangent requirements that may not be included herein, but are necessary to fulfill the requirements.
- 2) Identify and match specific media and messages that are suitable for targeted populations respective to appropriate ethnicity, age, education, language, income level, and other factors.
- 3) Provide estimated costs for approval before media is purchased or promotional materials are fully developed.
- 4) Coordinate with Omnitrans' Marketing Department to ensure that advertising campaigns are integrated with related community outreach and customer communication efforts led by staff.

4. REVIEW, ACCEPTANCE OR NON-ACCEPTANCE, & REVISION OF WORK

A. Pre-Production Review

- 1) Omnitrans' Director of Marketing or designee (Project Manager) will review all work before its production to determine whether that work meets Omnitrans' requirements.
- 2) Project Manager may reject the work or parts of it, according to the Non-Acceptance of Work paragraphs, in which case production of the rejected work may not proceed.
- 3) Project Manager may accept the work or parts of the work according to the Acceptance of Work paragraphs, in which case production of the accepted work may proceed.

B. Acceptance of the Work

- 1) Project Manager will accept work that has been deemed satisfactory according to Omnitrans' requirements and will notify Consultant in writing.
- 2) Consultant shall bill Omnitrans for Accepted Work at the contracted rates.
 - a) Consultant shall provide documentation of all pass-through costs such as media buys and production expenses.

C. Non-Acceptance of Work

- 1) Project Manager will not accept work that does not meet acceptability measures according to Omnitrans' requirements, and will notify Consultant in either verbal or written form.
- 2) Project Manager will review the revised work according to Omnitrans' requirements and the Review, Acceptance or Non-Acceptance, & Revision of Work subsections.
- 3) Consultant shall make revisions to all unsatisfactory work at Consultant's sole expense until that work is accepted by Project Manager. Unsatisfactory work includes obvious errors or omissions, failure to carry out prescribed requirements, and non-professional work, which may include artistic work that does not, according to the Project Manager, adequately convey Omnitrans' requirements.
- 4) Consultant shall complete all revisions on work in the time required by the original request, unless otherwise approved by Project Manager, which approval will not unreasonably withhold.

End Scope of Work

ATTACHMENT B - PRICING

Include all direct and indirect costs necessary to perform the requirements of the contract.					
	Base Yr 1	Base Yr 2	Base Yr 3	Opt Yr 1	Opt Yr 2
Beginning Date	07-01-19	07-01-20	07-01-21	07-01-22	07-01-23
Ending Date	06-30-20	06-30-21	06-30-22	06-30-23	06-30-24
Hourly Rate for Staff Positions	Rate	Rate	Rate	Rate	Rate
1. Bilingual Project Manager	\$100	\$103	\$106	\$109	\$113
2. Assistant Project Coordinator	\$100	\$103	\$106	\$109	\$113
3. Digital Marketing Director	\$100	\$103	\$106	\$109	\$113
4. Art Director	\$100	\$103	\$106	\$109	\$113
5. Web Director	\$100	\$103	\$106	\$109	\$113
6. (continue on separate sheet)	Continued				
Production Rate Range	Low/Mid/High	Low/Mid/High	Low/Mid/High	Low/Mid/High	Low/Mid/High
7. Radio Ad: 60 Second	\$1,500	\$1,550	\$1,600	\$1,640	\$1,680
	\$3,000	\$3,000	\$3,000	\$3,300	\$3,400
	\$5,150	\$5,150	\$5,150	\$5,600	\$5,800
8. TV Ad: 30 Second	\$ 7,000	\$ 7,200	\$ 7,400	\$ 7,600	\$ 7,900
	\$14,000	\$14,400	\$14,800	\$15,300	\$15,700
	\$22,000	\$22,600	\$23,300	\$24,000	\$24,700
Commission Rates (%)	Rate	Rate	Rate	Rate	Rate
9. Media Commission Rate (%)	10	10	10	10	10
10. Other Commission Rate (%)	10	10	10	10	10
11. Other:					

	Base Yr 1	Base Yr 2	Base Yr 3	Opt Yr 1	Opt Yr 2
Beginning Date	07-01-19	07-01-20	07-01-21	07-01-22	07-01-23
Ending Date	06-30-20	06-30-21	06-30-22	06-30-23	06-30-24
Hourly Rate for Staff Positions	Rate	Rate	Rate	Rate	Rate
1. Video Director	\$100	\$103	\$106	\$109	\$113
2. President/CEO	\$100	\$103	\$106	\$109	\$113
3. Other Celtis staff (as needed)	\$100	\$103	\$106	\$109	\$113

Additional Sheet for Attachment B - Pricing MKP19-19

Below addresses costs per the instruction sheet that are not addressed on pages 1 and 2, and includes additional cost-savings measures:

B1. Hourly rates for proposed staff

- In order to simplify the billing process, Celtis utilizes a blended rate.

B2. Percentage of time projected annually:

- Bilingual Project Manager (15%)
- Assistant Project Coordinator (10%)
- Digital Marketing Director (15%)
- Art Director (25%)
- Web Director (20%)
- Manager of Business Operation/Video Director (10%)
- President/CEO (5%)

B3. Rate for short social/digital ads (10-30 second ads)

- Base Yr 1: \$1,000 - \$3,000 - \$5,000
- Base Yr 2: \$1,000 - \$3,000 - \$5,000
- Base Yr 3: \$1,020 - \$3,060 - \$5,100
- Opt Yr 1: \$1,040 - \$3,120 - \$5,200
- Opt Yr 2: \$1,060 - \$3,180 - \$5,300

B4. Other cost saving measures

- More savings may be achieved with advanced planning of campaigns - we can produce all photography, voiceover, broadcast production, etc. at one time to cost-effectively give Omni-Trans an inventory of creative material that may be used across all broadcast and digital platforms throughout the year(s).
- Digital communications is another exceptional mechanism for maximizing marketing dollars. Celtis is adept in delivering smart-targeted digital campaigns that deliver measurable results (in almost real-time) while optimizing resources.
- Website SEO and functionality improvements can maximize marketing effectiveness - especially when coupled with digital/social marketing - a Celtis strength.
- Using facilities and fleet to extend brand and messaging is another potential cost-saving method that Celtis has strategically implemented with great success.
- Celtis experience in the transportation industry enables us to deliver the highest-quality campaigns in the most cost-effective manner for OmniTrans.



**SUBJECT
PROHIBITING WEAPONS IN THE WORKPLACE**

**APPROVED BY OMNITRANS
BOARD OF DIRECTORS**

DATE: June 7, 2017

I. Purpose

It is the policy of Omnitrans to maintain a work environment that is safe for all persons, including the community, and conducive to attaining high work standards. To achieve these objectives, the Agency prohibits the possession of firearms and weapons in the work place, regardless of any license or permit that an individual may have which otherwise authorizes the individual to carry firearms or weapons.

It is illegal and a criminal violation to possess weapons in public buildings (California Penal Code 171b and 171.7).

II. Scope

This policy applies to all Omnitrans employees, including but not limited to staffing agency workers and contractors working for or with the Agency at any time, regardless of whether the Agency is the actual employer.

Possession of firearms and weapons is prohibited at all Omnitrans' offices, parking lots, agency vehicles and job sites, and in all Agency vehicles.

The following person/s are exempt from this policy as stated: a guard of a contract carrier operating an armored vehicle, and any law enforcement officer who is carrying out official duties engaged in protecting and preserving property or life within the scope of his or her employment.

Omnitrans will strictly enforce this policy. Violation of this policy will result in immediate disciplinary action, up to and including termination.

III. Procedure

A. COMMUNICATION OF POLICY

(a) Each employee of the Agency shall receive a copy of this policy at the time of his/her hire and shall sign a copy of the acknowledgment. Employees who were employed before the effective date of this policy shall also receive a copy of this policy and shall sign a copy of the acknowledgment. A copy of the signed acknowledgment and of all new and revised policies throughout the employee's employment shall be maintained in each employee's personnel file.

(b) A copy of this policy shall be attached to each contractor's contract, and shall become a part of its contract. The contractor shall be responsible for communicating this policy to its employees and any subcontractors to which the contractor sublets any portion of its contract.



**SUBJECT
PROHIBITING WEAPONS IN THE WORKPLACE**

**APPROVED BY OMNITRANS
BOARD OF DIRECTORS**

DATE: June 7, 2017

B. PROHIBITED CONDUCT

(a) The transportation of firearms or weapons in Agency vehicles is prohibited. This includes but is not limited to:

- (1) to and from work,
- (2) when conducting Agency business,
- (3) at all times in Agency-owned or leased vehicles.

(b) The possession or carrying of permitted and non-permitted firearms or weapons while at Agency buildings, parking lots, sponsored events, and job sites.

(c) Exception: Power actuated tools which are manufactured for the use of fastening building materials and sanctioned tools for the purpose of performing Agency job duties are not subject to this policy.

C. SEARCH

(a) Omnitrans reserves the right to conduct reasonable, unannounced searches of Agency premises and personal searches of employees and others while entering, on, or leaving Agency premises, including, but not limited to, personal effects, vehicles, lockers, desks, tool boxes, clothing, meal containers, and baggage. Searches will be conducted when the Agency has a reasonable suspicion to believe that a particular employee may be in possession of a weapon or firearm.

(b) "Reasonable suspicion" is defined as a suspicion that is based on specific personal observations such as an employee's manner, disposition, behavior, speech, information provided to management by an employee, by law enforcement officials, by a security service, or by other persons believed to be reliable, or a suspicion that is based on other surrounding circumstances.

(c) Individuals refusing to allow an inspection will not be detained or forced to submit to the inspection. Refusal violates Agency policy and constitutes an act of insubordination constituting disciplinary action, up to and including separation of the employment relationship. Non-employees who refuse to allow an inspection will not be permitted on Agency premises and will be required to immediately leave the premises. Employees will be relieved of all duties while pending investigation.

D. DISCIPLINE

(a) Violations of any portion of this policy will subject the employee to discipline,



**SUBJECT
PROHIBITING WEAPONS IN THE WORKPLACE**

**APPROVED BY OMNITRANS
BOARD OF DIRECTORS**

DATE: June 7, 2017

up to and including separation of employment.

(b) Violations by a contractor's employee or subcontractor of any portion of this policy may constitute a breach of contract and regardless will mandate the immediate removal of the contractor's employee from Agency premises, prohibition against the individual accessing Agency premises in the future, and may also constitute a breach of contract.

E. REPORT OF VIOLATIONS

1. Employee Violations

Employees are required to report violations of this policy without regard to the relationship between the individual who initiates the prohibited behavior and the individual reporting it. An employee who believes that another employee may be in violation of this policy must report the alleged violation to the employee's manager or supervisor, the department director, security, or the appropriate departmental Human Resources representative.

Departments are responsible for implementing this policy. The Agency will promptly investigate allegations of violations of this policy.

OmniTrans reserves the right to authorize searches for prohibited weapons on its property when a violation is reported or when probable cause or reasonable suspicion is present consistent with law.

Employees should be aware that there is no reasonable expectation of privacy with respect to weapons in the workplace. The Agency's right to conduct searches includes, but is not limited to, such areas and items as lockers, desks, workstations, offices, purses, briefcases, bags, toolboxes, and lunch bags.

Searches of the employee's work area and belongings, as described above, may be conducted by the Security & Emergency Preparedness Coordinator, or designee. Searches of all types, including surrounding agency property, personal property and the employee may be conducted by law enforcement in accordance with law should reasonable suspicion be present. Any weapon found in violation of this policy may be confiscated. Refusal to permit a search may result in discipline, up to and including separation.

2. Visitor Violations

Visitors are not allowed to carry a weapon on the premises. Any visitor carrying a weapon into a posted no-carry agency facility is creating an elevated risk to security and safety that warrants a response leading to compliance with the law. If the visitor



**SUBJECT
PROHIBITING WEAPONS IN THE WORKPLACE**

**APPROVED BY OMNITRANS
BOARD OF DIRECTORS**

DATE: June 7, 2017

poses an immediate risk to security or safety, law enforcement shall be notified immediately by calling 9-911. The visitor shall be considered an immediate risk to safety and security if he/she is acting in an aggressive, belligerent, confrontational, suspicious or in an otherwise questionable manner while carrying a weapon.

F. FALSE REPORTS

Employees making intentionally false and malicious complaints of weapons in the workplace will be subject to disciplinary action, up to and including separation and/or will be reported to the proper authorities as appropriate.

G. ROLES AND RESPONSIBILITIES

Employees are responsible for understanding and complying with the Policy Prohibiting Weapons in the Workplace.

Whenever there is a question as to whether an instrument, article or substance is considered a weapon in violation of this policy, it is the employee's responsibility to seek clarification. Employees seeking clarification should direct their questions to the agency's Security & Emergency Preparedness Coordinator at 909-379-7117 prior to bringing the item(s) to Omnitrans work sites and events, as well as agency-owned or leased facilities or vehicles.

H. SAFETY FIRST

In applying this policy, no employee shall take any action that will risk his or her own safety or the safety of other individuals. No attempt should ever be made by an employee to restrain or forcibly evict an armed person from agency premises.

An individual's continued non-compliance after being properly informed of the law (California Penal Code 171 (b)) will result in notification to law enforcement and discipline, up to and including separation of employment. Employees should notify security immediately.

An employee who feels an imminent danger to his or her own safety or the safety or security of others, should avoid any interaction with the individual. Immediately contact law enforcement by calling 9-911 and security at 909-379-7117.

I. ANTI-RETALIATION PROVISION

Omnitrans strictly prohibits any retaliation against an employee who has reported a possible breach of policy. If an employee feels that he or she has been subjected to retaliation in violation of this policy, the employee must immediately report it to his or her supervisor or other designated Human Resources representative.



SUBJECT
PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS
BOARD OF DIRECTORS

DATE: June 7, 2017

J. DEFINITIONS

1. **Firearm or weapon includes, but is not limited to:** A weapon, a pistol or rifle, whether loaded or unloaded, capable of firing a projectile and using an explosive as a propellant.
 - A firearm, whether loaded or unloaded, from which a shot may be discharged including but not limited to handguns, pistols, revolvers, shotguns, rifles, and bb guns;
 - A gun that can discharge a shot or a projectile by means of an explosive or gas, or compressed air;
 - A device designed to be used as a weapon, from which can be expelled a projectile by the force of any explosion or force of combustion;
 - Any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
 - Any destructive device;
 - Any device designed as a weapon and capable of producing great bodily harm, including but not limited to, stun guns, stun batons;
 - An electric weapon such as a taser gun;
 - Any combustible or flammable liquid, or other substance, device, or instrumentality that, in a manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or any fire that is used to produce death or great bodily harm;
 - Any knife that is carried with intention or calculation to produce death or great bodily harm having a blade length in excess of four (4) inches, the blade of which is fixed or is capable of being fixed in an unguarded position by the use of one or two hands. Switchblades are specifically prohibited. (Knives intended to be used as eating utensils, and stored or maintained in office kitchens or lunchrooms do not represent a violation of this policy.)
2. **Office:** All permanent facilities, all mobile facilities, all leased facilities, and any facility designated as an office by the agency.
3. **Parking lot:** All lots at permanent facility, park and rides, lots at project sites, any lot that the agency designates as a parking lot that is not at a permanent facility or project site.
4. **Agency vehicle:** All agency-owned buses/vehicles, all agency-leased buses/vehicles, all agency-rental buses/vehicles, and all personal vehicles for which the owner receives a vehicle allowance, all personal vehicles where the owner receives reimbursement for mileage.



PERSONNEL POLICY MANUAL

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SUBJECT
PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS
BOARD OF DIRECTORS

DATE: June 7, 2017

5. **Search:** To examine in order to find something concealed.

6. **Job sites:** Any and all locations where the agency conducts business.

SIGNS

1. At each entrance to buildings, parking lots, and project sites, a sign shall be posted in a location that is conspicuous to all who could enter a building, parking lot, or project site.
2. Signs shall have wording or pictogram that prohibits firearms, weapons and give notice of video surveillance. Signs shall be vandalism resistant and of the quality that they will not fade due to the elements.