

AGENDA ITEM 1 G
Consent Item

MEMORANDUM

DATE: February 6, 2020

TO: El Dorado County Transit Authority

FROM: Matthew Mauk, Executive Director

SUBJECT: Contract Award in Response to the Request for Proposals (RFP) No. 19-03 for Bus Shelter Advertising and Maintenance Services

REQUESTED ACTION:
BY MOTION,

- 1. Award contract to Orion Outdoor Media for bus shelter advertising and maintenance services consistent with the scope of work in El Dorado County Transit Authority RFP No. 19-03**
- 2. Authorize the Executive Director to finalize terms, exercise future options and execute all documents related to the contract award from RFP No. 19-03**

BACKGROUND

Since at least 1998, the El Dorado County Transit Authority (El Dorado Transit) has contracted with private firms to provide revenue-generating bus shelter advertising services. The advertising program currently includes exterior advertising space on twenty (20) existing bus shelters and the potential for space on any new shelters installed during the term of the contract. Per the terms of the agreement, the contractor takes full responsibility for all aspects of the exterior print advertising program as well as repair and routine maintenance of all advertising shelters, as set forth in the El Dorado Transit Request for Proposals (RFP) No. 19-03.

Subject to the terms and conditions set forth in RFP No. 19-03 and the attached draft agreement, the selected contractor will have exclusive rights to place advertising on the designated bus shelters. In return for said exclusive advertising rights, the contractor will provide compensation to El Dorado Transit in the form of monthly payments. The compensation may be based on either a percentage of revenue generated and/or a guaranteed amount. El Dorado Transit retains the right to negotiate and select the preferred payment formula and the required methods for invoicing/reporting.

DISCUSSION

On December 26, 2019, El Dorado Transit publicly released RFP No. 19-03 seeking proposals from qualified contractors to provide bus shelter advertising, maintenance services and to yield maximum advertising revenue to the agency. The proposed term of the contract to be let from this solicitation is a base period of just over three (3) years, through June 30, 2023, with two (2) additional two-year options to be exercised at El Dorado Transit's sole discretion.

El Dorado Transit received one (1) proposal prior to the published January 21, 2020 deadline. Staff reviewed the proposal from Orion Outdoor Media and determined the proposal to be responsive in all material aspects. Orion Outdoor Media is the incumbent shelter advertising and maintenance contractor and has demonstrated excellent performance throughout the term of the existing agreement. Orion Outdoor Media proposed a 20% revenue share, less verified production costs, in accordance with industry standards. This revenue sharing method and rate represents no change from the existing arrangement.

Staff recommends award of the bus shelter advertising and maintenance services contract to Orion Outdoor Media and requests authorization for the Executive Director to 1) finalize the terms of the agreement, 2) exercise future contract options based on revenue experience and performance, and 3) execute all documents related to the contract award.

FISCAL IMPACT

The adopted Fiscal Year (FY) 2019/20 Operating Budget includes an estimated \$14,000 in annual revenue from the shelter advertising program. At the mid-year closing, the contract had yielded \$7,902.70 of revenue to the agency in the first six (6) months of FY 2019/20.



EL DORADO TRANSIT



REQUEST FOR PROPOSALS #19-03

Bus Shelter Advertising and Maintenance Services

December 26, 2019

**Prepared by: El Dorado County Transit Authority
6565 Commerce Way
Diamond Springs, CA 95619
(530) 642-5383
www.eldoradotransit.com**

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EL DORADO TRANSIT

REQUEST FOR PROPOSALS

BUS SHELTER ADVERTISING AND MAINTENANCE SERVICES

The El Dorado County Transit Authority (El Dorado Transit) is seeking proposals from qualified contractors to provide revenue-generating transit advertising services. This advertising potential includes exterior advertising space on twenty (20) bus shelters. The advertising Contractor shall take full responsibility for all aspects of exterior advertising and shelter installation/maintenance as set forth in this Request for Proposals (RFP).

El Dorado Transit operates a rural, interconnecting, fixed route service within and between the communities of El Dorado Hills, Cameron Park, Shingle Springs, Diamond Springs, El Dorado, Placerville, Camino and Pollock Pines. Additional services include commuter service along U.S. Highway 50 to the downtown Sacramento and various demand-response services within El Dorado and neighboring counties.

The full Request for Proposals is available on the El Dorado Transit Website at www.eldoradotransit.com. If Addendums are necessary, they will be posted on the website. Prospective proposers are required to notify Megan Wilcher, via e-mail at: mwilcher@eldoradotransit.com by January 6, 2020, by 2:00 PM, of their intent to submit a proposal, so that any Addendums, changes or Responses to inquiries can be transmitted.

Requests for clarification regarding any item in this RFP must be submitted in writing via e-mail to mwilcher@eldoradotransit.com and received no later than Monday, January 6, 2020 by 2:00 PM. No other direct contact with El Dorado Transit staff will be accommodated during the RFP period.

Each proposal shall consist of one (1) original and two (2) copies, which will be accepted at the El Dorado Transit office, 6565 Commerce Way, Diamond Springs, CA 95619 until 4:00 PM, January 21, 2020.

Proposals shall ensure nondiscrimination in the award and meet all local, state and federal requirements related to a transit operation.

El Dorado Transit expressly reserves the right to reject any and all proposals, to waive any irregularity or immaterial deviation in any proposal, to modify the RFP schedule or the RFP procedure and to withdraw this RFP at any time without prior notice. El Dorado Transit will be the sole judge of the responsibility of any proposer and of the suitability of the materials and/or services to be rendered.

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I. INTRODUCTION

A. EL DORADO COUNTY TRANSIT AUTHORITY

El Dorado Transit operates public transportation on the western slope of El Dorado County in northern California east of Sacramento. El Dorado Transit operates under a Joint Powers Agreement between the County of El Dorado and the City of Placerville. Board membership includes three (3) members appointed by the County of El Dorado Board of Supervisors and two (2) members appointed by the Placerville City Council.

The Executive Director and/or his or her designee will manage this RFP and any contract(s) awarded as a result this solicitation.

B. PUBLIC TRANSIT SERVICES

El Dorado Transit services include local fixed-routes, commuter service to downtown Sacramento and demand response services including local Dial-A-Ride and non-emergency medical transportation.

Local fixed routes operate within and between the communities of Cameron Park, Shingle Springs, Diamond Springs, El Dorado, Placerville, Camino and Pollock Pines. Sacramento commuter routes transport commuters from rural and suburban park and ride lots along U.S. Highway 50 to stops in the downtown Sacramento. Additional commuter service provides connections within the local fixed route communities, El Dorado Hills and light rail in Folsom California.

El Dorado Transit provided over 1 million vehicle revenue miles and carried over 375,000 passengers in fiscal year 2019. Bus routes and schedules are detailed on the El Dorado Transit website at www.eldoradotransit.com.

II. ADVERTISING SPACE AVAILABLE

Bus shelters with advertising panels: Two (2) panels per shelter for a total of forty (40) panels with 4 foot by 6 foot ads.

Locations:

Stop Name	Coordinates	Shelter(s)
Big 5	38.730227, -120.835513	1
Broadway and Schnell School Road	38.732434, -120.780171	1
Cambridge Road Park and Ride	38.658977, -120.998476	1
Cameron Park Drive at Green Valley Road	38.701023, -120.996212	2
El Dorado Hills Park and Ride	38.647633, -121.066699	2
Forni Road at Lo-Hi Way	38.720899, -120.830660	1
Home Depot	38.732440, -120.824508	1
Marshall Hospital	38.725068, -120.790439	1

Missouri Flat Transfer Center	38.705858, -120.830179	2
Placerville Library	38.726299, -120.829438	1
Prospector Plaza	38.712423, -120.842585	1
Ray Lawyer Drive Park and Ride	38.726791, -120.824267	2
Regal Theaters	38.731594, -120.834694	1
Safeway Plaza (Pony Express Trail)	38.762842, -120.577479	1
Tractor Supply	38.732015, -120.780818	1
Victory Mine Building	38.695112, -120.807707	1

III. SCOPE OF WORK/SERVICES

El Dorado Transit is seeking proposals from qualified contractors to provide bus shelter advertising services which will yield maximum revenue to El Dorado Transit. The proposed term of the Contract is a base period of three (3) years, commencing upon the date of contract execution (anticipated March 2020) through June 30, 2023, with two (2) additional two-year options to be exercised at El Dorado Transit’s sole discretion. Pricing, rates and or revenue commitments for all seven (7) years must be included in the proposal.

The Contractor shall have exclusive rights to place advertising on bus shelters, subject to the terms and conditions set forth in this Request for Proposals and the attached, draft “Agreement.”

In return for said exclusive advertising rights, the Contractor shall provide compensation to El Dorado Transit in the form of monthly payments. The compensation may be based on either a percentage of revenue generated and/or a guaranteed amount. El Dorado Transit retains the right to negotiate and select the preferred payment formula and the required methods for invoicing/reporting.

Contractor shall provide all finished advertising material to be placed on the bus shelters. Contractor shall maintain in good condition and repair all advertisements on bus shelters, and shall immediately replace any advertising material that has been stolen, damaged, or defaced. The Contractor shall remove, in a timely fashion, any advertisements with expired sales agreements.

The Contractor shall provide complete routine and on-call maintenance for all existing and newly installed ad shelters for the duration of the agreement. Required services shall include, but will not necessarily be limited to, trash pick-up and removal; power washing of shelter, pad and surrounding areas; immediate removal of graffiti; immediate repair to shelters and installation of new shelters, as per the direction of El Dorado Transit.

The Contractor shall employ its best efforts to develop and sell advertising space, operating a fully staffed business office that includes the following:

- An experienced local advertising sales force with the capability of acquiring national advertisers and accounts.
- An administrative facility and local work force capable of insuring proposed installation, both routine and on-call maintenance, repair and removal of advertising displays.

IV. SPECIAL CONDITIONS

El Dorado Transit reserves the right to use up to six (6) bus shelter advertising spaces each calendar year for self-promotion.

All advertisements shall be reviewed and approved in writing by El Dorado Transit prior to their placement on buses or shelters.

El Dorado Transit shall maintain content control of advertisement. El Dorado Transit will not lease bus shelter advertising space the following described announcements or advertisements (hereinafter advertisement). A prohibited advertisement is one which:

- a) Is false, misleading or deceptive;
- b) Relates to an illegal activity;
- c) Is explicit sexual material, obscene material, or material harmful to minors as these terms are defined in California Penal Code Section 311;
- d) Depicts violence and/or anti-social behavior;
- e) Holds up individuals or groups of people to public ridicule, derision, or embarrassment;
- f) Includes language which is obscene , vulgar, profane, libelous or scatological;
- g) Includes language which presents a clear and present danger of causing riot, disorder, or other imminent threat to public safety;
- h) Promotes sale or use of tobacco;
- i) Promotes sale or use of alcohol;
- j) Includes language or images that promote religious or faith-based ideologies;
- k) Is generally understood in the El Dorado County community to convey, whether expressly or implied, intentionally or unintentionally, by inference or innuendo, the religious, social, political, legal or moral view of any person or entity.
- l) Would cause the advertising space if posted singly or in combinations with other like advertisements, to become a public forum for the dissemination, debate, and/or discussion of public issues – as determined by applicable legal precedent.

V. MAINTENANCE AND REPAIR OF BUS SHELTERS

Contractor shall routinely clean and maintain bus shelters no less than twice weekly, including cleaning advertising panels, removing trash around shelters and removing any graffiti or unauthorized posting. Contractor shall provide similar maintenance service to the Missouri Flat Transfer Center no less than three (3) times per week.

Contractor, at its sole cost and expense, shall repair existing bus shelters and all new bus shelters with advertising panels, after they are constructed. Damage to existing and new bus shelters caused by vandalism shall be included in Contractor's responsibility.

Contractor will respond immediately upon notification if an advertising bus shelter requires extra cleaning, maintenance or repair due to planned or unforeseen issues. Contractor will make every effort to resolve the maintenance issue within the same day, but no later than twenty-four (24) hours, following notification. If Contractor is unable to resolve the maintenance issue by 5:00 pm the same day, it will notify Transit with a plan of action and schedule to take care of the issue within the required timeframe.

VI. CONTACT

Megan Wilcher, Administrative Coordinator
El Dorado County Transit Authority
6565 Commerce Way
Diamond Springs, CA 95619
(530) 642-5383 extension 229
Email: mwilcher@eldoradotransit.com

VII. PROJECT TIMETABLE

December 26, 2019	Issue Request for Proposals
January 6, 2020 by 2:00 PM	Written Questions/Inquires due
January 10, 2020	Response to Questions/Inquiries released
January 21, 2020 at 4:00 PM	RFP Proposals due
February 6, 2020	Contract Award (anticipated)
March 2, 2020	Execute Contract (anticipated)

VIII. GENERAL CONDITIONS

A. Limitations

This Request for Proposal (RFP) does not commit El Dorado Transit to award a contract, to pay any costs incurred in the preparation of the proposal in response to this request, or to procure or contract for services or supplies. El Dorado Transit expressly reserves the right to reject any and all proposals or to waive any irregularity or information in any proposal or in the RFP procedure and to be the sole judge of the responsibility of any proposer and of the suitability of the materials and/or services to be rendered. El Dorado Transit reserves the right to withdraw this RFP at any time without prior notice. Further, El Dorado Transit reserves the right to modify the RFP schedule described above.

Until the final ranking of firms is prepared and released, the proposals shall be held in confidence and shall not be available for public review. No proposal shall be returned

after the deadline set for acceptance of the proposals. All proposals shall become property of El Dorado Transit and shall be subject to disclosure following the award of a contract, pursuant to the Public Records Act.

B. Award

El Dorado Transit may ask proposers to present oral presentations regarding their firms and any special expertise in the necessary areas. If needed, oral presentations will likely be conducted during the week of January 27th – 31st, 2020. All finalists may be required to participate in negotiations and submit financial, technical or other revisions of their proposals as may result from negotiations. El Dorado Transit also reserves the right to award the Contract without discussion, based upon the initial proposals. Accordingly, each initial proposal should be submitted on the most favorable terms from a financial and technical viewpoint.

C. RFP Addenda

Any changes to the RFP requirements will be made by written addenda and shall be considered part of the RFP. Upon issuance by El Dorado Transit, such addenda shall be incorporated in the final Contract, and shall prevail over inconsistent provisions of earlier issued documentation. It is each proposer's responsibility to check for addenda prior to submission of its proposal.

D. Verbal Agreement or Conversation

No prior, current, or post award verbal conversations or agreements with any officer, agent, or employee of El Dorado Transit shall be valid to affect or modify any terms or obligations of the RFP or the Contract resulting from this solicitation.

E. Signature

Each proposal shall provide the following information: name, title, address, telephone number and email of individual(s) with authority to bind the company and designated contact(s) during the period of proposal evaluation. The proposal shall be signed by an official authorized to bind the company and shall contain a statement to the effect that the proposal is a firm offer for at least a thirty (30) day period.

F. Term

The proposed term of the Contract is a base period of three (3) years, commencing upon the date of contract execution (anticipated March 2, 2020) through June 30, 2023, with two (2) additional two-year options to be exercised at El Dorado Transit's sole discretion.

G. Termination Clause

The Contract to be awarded pursuant to this RFP may be terminated by El Dorado Transit for no cause with ninety (90) days prior written notice to Contractor.

H. Insurance and Indemnity

The Contractor shall provide evidence of the following insurance requirements, prior to execution of the Contract, naming the El Dorado County Transit Authority as an additional insured:

Commercial General Liability Insurance of not less than \$1,000,000 per occurrence (\$2,000,000 general and products-completed operations aggregate (if used)) for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/locations (with the ISO CC 2501 or insurer's equivalent endorsement provided to Transit) or the general aggregate limit shall be twice the required occurrence limit.

Automobile liability of at least \$500,000 is required in the event motor vehicles are used by the Contractor and/or any subcontractor in the performance of the Agreement. One million dollars (\$1,000,000) per accident for bodily injury and property damage combined single limit.

The Contractor shall be required to fully indemnify and hold harmless El Dorado Transit and its respective officers, directors, agents, employees and representatives, from and against all loss and claims resulting from injury, death or damage to property, arising out of Contractor's operations or activities under the Contract.

Examples of El Dorado Transit's full, standard indemnity and insurance requirements are detailed in Sections 11 and 12 of the attached draft agreement, respectively.

I. Contract Arrangements

The Contractor shall execute a contract similar to El Dorado Transit's Professional Services Agreement, which meets current Federal requirements. Included as an attachment for review is a copy of a sample El Dorado Transit Professional Services Agreement specific to advertising.

1. Disadvantaged Business Enterprise (DBE) Policy: It is the policy of the U.S. Department of Transportation that minority- and women-owned business enterprises (hereby referred to as DBE's) as defined in 49 CFR Part 23, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. DBE certified consultants are encouraged to submit proposals. El Dorado Transit will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award

and performance of any contract covered by 49 CFR, Part 26 on the basis of race, color, sex, or national origin.

2. DBE Obligation: The recipient or its contractor agrees to ensure that DBEs have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under the final Contract. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that DBEs have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.
3. Title VI of the Civil Rights Act of 1964: The contractor agrees to comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (49 USC 2000d) and the regulations of the U.S. Department of Transportation issued thereunder in 49 CFR Part 21.
4. Equal Employment Opportunity: In connection with the performance of the Contract, the contractor shall not discriminate against any employee or applicant for employment because of race, color, age, creed, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Each proposal, to be considered responsive, must include the following:

1. A copy of the Contractor's affirmative action policy (applicable for firms with 50 or more employees)
2. Information about the Contractor's program for use of DBEs in the performance of this work, including the following:
 - The names and addresses of DBE firms that will participate;
 - The description of the work each named firm will perform;
 - The dollar amount of participation by each DBE firm.
3. Conflict of Interest

Firms submitting proposals in response to this RFP must disclose to El Dorado Transit any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided under the Contract for advertising services to be awarded pursuant to this RFP.

If this firm has no conflict of interest, a statement to that effect shall be included in the proposal.

IX. PROPOSAL CONTENT AND ORGANIZATION

Proposals should be limited to specific discussion of the elements outlined in this RFP. The intent of this RFP is to encourage responses which meet the stated requirements and which propose the best methods to accomplish the work.

Transmittal Letter

The Transmittal Letter should include the name, title, address, phone number, and original wet signature of an individual with authority to negotiate on behalf of and to contractually bind the company, and who may be contacted during the period of proposal evaluation. Only one transmittal letter need be prepared to accompany all copies of the proposals.

The following information is required as part of the Transmittal Letter:

Addendums: If an Addendum has been issued by El Dorado Transit, receipt must be acknowledged in the letter.

Duration: The letter should state that the proposal terms shall remain binding for thirty (30) days following the date of the proposal.

Project Management

The proposal must contain an explanation of the project management system and practices to be used to assure that the required proposed services are completed timely and that the quality of the products and services will meet El Dorado Transit's requirements.

Contractor Staff

The proposal must describe the qualifications and experience of each professional who will participate in the project, including a resume for each member of the project team. A project manager must be designated, and an organizational chart must be included, showing the manager and all project staff who will provide services.

Qualifications and References

The proposal must include a list of references for similar clients. References should include client contact names, addresses, phone numbers, descriptions of the type of work performed, approximate dates on which the work was completed, and professional staff who performed the work. If a subcontractor is proposed, two to three similar qualifications and references should be provided for the subcontractor.

Revenue Proposal

The proposal must include the proposed revenue sharing including the basis for methodology.

Number of Copies

The proposal must include one (1) original and two (2) copies of the document and any attachments.

All proposals must be received at the following place of business, no later than **4:00 PM, January 21, 2020**:

**El Dorado County Transit Authority
ATTN: Megan Wilcher, Administrative Coordinator
6565 Commerce Way
Diamond Springs, California 95619**

If proposals are mailed, they must be addressed correctly and received by the above deadline. Late proposals shall not be accepted. Postmarks shall not be accepted. Proposals must be submitted in a sealed envelope clearly marked "Advertising Services Proposal."

Until award of the Contract, proposals shall be held in confidence and shall not be available for public review. Upon award of the Contract for the successful proposal, all proposals, whether selected or rejected, shall become the property of El Dorado Transit and shall be public records. No proposal shall be returned after the date and time for opening. All proposals received prior to the date and time specified above for receipt may be withdrawn or modified by written request of the proposer. To be considered, the modification must be received in writing, in the same number of copies as the original proposal, prior to the date and time specified for receipt of proposals.

X. PROPOSAL EVALUATION AND SELECTION

A panel of El Dorado Transit staff will evaluate the proposals. Proposers may be contacted and asked for further information, if necessary, and may be expected to appear for oral interviews. All previous and current clients provided as references may be contacted. The panel will make recommendations to the El Dorado Transit Executive Director on the basis of the proposal, oral interview and/or reference checks. El Dorado Transit reserves the right to select a Contractor based solely on written proposals, without convening oral interviews.

Upon receipt of the proposals, a technical evaluation will be performed. The proposal will be reviewed and evaluated with criteria designed to judge the quality of the proposal. Evaluation criteria will include such considerations as:

- Specialized experience and technical competence
- Expertise in transit advertising
- Specific statistical and demographic related experience and qualifications
- Understanding of and approach to scope of work/services
- Qualifications of personnel to be assigned to this Contract

- Revenue methodology and guarantee
- Availability and experience of local work force with the capability of acquiring national advertisers and accounts
- Availability and experience of local work force with the capability of ensuring both routine and timely on-call maintenance, repair, installation and removal of advertising displays and related shelter facilities.

In addition, the participation of qualified disadvantaged and minority-owned firms in this project is encouraged.

**AGREEMENT FOR BUS SHELTER ADVERTISING
AND MAINTENANCE SERVICES
BY AND BETWEEN
EL DORADO COUNTY TRANSIT AUTHORITY
AND _____**

This Agreement, made and entered into this ____ day of _____, 2020, by and between _____, hereinafter referred to as “Contractor,” and El Dorado County Transit Authority, a public agency, hereinafter referred to as to “El Dorado Transit” who agree as follows:

1. Grant of Rights and Privileges to Contractor

Subject to the rights, terms and limitations contained in this Agreement, including any exhibits attached hereto and made a part hereof, El Dorado Transit hereby grants Contractor the exclusive license to supply, install and maintain commercial advertising on bus shelters in a form, style and manner that is acceptable to El Dorado Transit.

2. Advertising Content

A. El Dorado Transit shall maintain content control of advertisements. El Dorado Transit will not lease advertising space for the following described announcements or advertisements (hereinafter advertisement). A prohibited advertisement is one which:

- (i) Is false, misleading or deceptive;
- (ii) Relates to an illegal activity;
- (iii) Is explicit sexual material, obscene material, or material harmful to minors as these terms are defined in California Penal Code Section 311;
- (iv) Depicts violence and/or anti-social behavior;
- (v) Holds up individuals or groups of people to public ridicule, derision, or embarrassment;
- (vi) Includes language that is obscene, vulgar, profane, libelous or scatological;
- (vii) Includes language that presents a clear and present danger of causing riot, disorder, or other imminent threat to public safety;
- (viii) Promotes the sale or use of tobacco;
- (ix) Promotes legal gambling.

- (x) Promotes the sale or use of alcohol.
- (xi) Includes language or images that promote religious or faith-based ideologies.
- (xii) Is generally understood within the El Dorado County community to convey, whether expressly or impliedly, intentionally or unintentionally, by inference or innuendo, the religious, social, political, legal, or moral view of any person or entity.
- (xiii) Would cause the advertising space, if posted singly or in combinations with other like advertisements, to become a public forum for the dissemination, debate, and/or discussion of public issues – as determined by applicable legal precedent.

B. El Dorado Transit Executive Director and/or El Dorado Transit Board of Directors shall review and approve all advertising content prior to installation. Contractor shall present the information to El Dorado Transit for approval and El Dorado Transit agrees to reply within a timely manner. Upon breach of this covenant by Contractor, El Dorado Transit reserves the right to cancel this Agreement without any liability.

3. Effective Date/Term

This Agreement shall be effective from the date of execution. The term of the Agreement shall extend from the date of execution and shall continue through the date of **June 30, 2023** with an option for two (2) additional two-year terms, to be exercised at El Dorado Transit's sole discretion. Contractor shall not commence work without the prior written authorization from El Dorado Transit. Either party may terminate the Agreement with ninety (90) day written notice at any time during the term of this Agreement.

4. Terms of Payment

Contractor agrees to the following payments to El Dorado Transit:

- (i) 20% revenue share on all shelter advertising revenue.
- (ii) Revenue share payments to El Dorado Transit shall be based upon gross revenue payments to Contractor less verified production costs in accordance with industry standards pertaining to revenue share payments. Production costs and sales contract information shall be submitted to and approved by El Dorado Transit prior to installation of advertisement and included in the monthly statement.

5. Method of Payment

Contractor shall make payments to El Dorado County Transit Authority at 6565 Commerce Way, Diamond Springs, California 95619. The payment shall be due on the fifth

(5th) day of each month. Contractor shall make monthly payments within ten (10) days from the due date. Late payments shall bear interest of one and one-half percent (1 ½ %) per month accruing from the due date. Interest shall continue to accrue on all past-due amounts until all such past-due amounts are collected or paid. Notwithstanding any interest owed on late payments, El Dorado Transit reserves the right to cancel this Agreement for breach if Contractor fails to make a payment to El Dorado Transit. Contractor shall provide El Dorado Transit with a monthly statement, in a form acceptable to El Dorado Transit, detailing gross advertising sales and revenue for the preceding month, broken down by category (shelter, guaranteed minimum etc.) and shelter location. The monthly statement shall accompany the monthly payments. Unless agreed otherwise, payment shall be delivered by first class mail through the facilities of the U.S. Post Office, postage prepaid, addressed to the applicable party in the manner set forth in Article 30 of this Agreement. This provision shall survive the termination of the Agreement.

6. Time for Performance

Contractor shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory accomplishment of the Contractor's obligations under this Agreement. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by a cause, present or future, which is beyond the reasonable control of the party.

7. Professional Standards

Contractor warrants and guarantees that the work provided under this Agreement shall be performed and completed in a professional manner. All services shall be performed in the manner and according to the professional standards observed by a competent practitioner of the profession in which Contractor is engaged.

8. Release of Information/Promotional Materials

Before releasing any public information, including reports or promotional materials, prepared in connection with this Agreement, Contractor shall provide a copy to the Executive Director or designated agent for review and approval prior to release of said documents.

9. Covenant Against Gratuities

Contractor covenants that it has not offered or given gratuities in the form of entertainment, gifts, or otherwise to any member, officer, or employee of El Dorado Transit with a view toward securing favorable treatment in the award, modification or performance evaluation of this Agreement. For breach or violation of this covenant, El Dorado Transit shall have the right to cancel this Agreement without any liability to Contractor.

10. Conflict of Interest

Contractor covenants that Contractor, at the time of the execution of this Agreement, has no interest and shall not acquire any interest, direct or indirect, which would conflict with the

performance of services required to be performed under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed.

Contractor shall not employ any El Dorado Transit official or employee in the work performed pursuant to this Agreement. No officer or employee of El Dorado Transit shall have any financial interest in this Agreement in violation of the applicable provisions of the California Government Code. Contractor warrants and covenants that no official or employee of El Dorado Transit will be employed in the performance of this Agreement without the immediate divulgence of such fact to El Dorado Transit.

Upon breach of this covenant by Contractor, El Dorado Transit may cancel this Agreement without any liability if Contractor fails to remedy such conflict within thirty (30) days of notice to Contractor. In its discretion, El Dorado Transit may also recover the full amount of any such compensation paid to such official, employee or business entity.

11. Indemnification

To the fullest extent permitted by law, Contractor does hereby assume liability for, and agrees to defend, indemnify, protect, save and hold harmless El Dorado Transit, its directors, officers, employees, or authorized volunteers and its successors and assigns and each and every one of them from and against any and all liabilities, obligations, losses, damages, penalties, fines, claims, actions, suits, costs and expenses and disbursements (including legal fees and expenses) of any kind and nature imposed, asserted against, incurred or suffered by El Dorado Transit or its directors, officers or employees or its successors and assigns by reason of damage, loss or injury (including death) of any kind or nature whatsoever to persons or property caused by or in any way relating to or arising out of:

(i) any negligent act or action, or any neglect, omission or failure to act when under a duty to act on the part of Contractor or any of its officers, agents, servants, employees, subcontractors or subcontractors of any tier in its or their performance hereunder, except to the extent caused by the sole or active neglect of El Dorado Transit and except as proscribed by statute; and

(ii) any claim of patent or copyright infringement or publication of defamatory material including El Dorado Transit's failure to request removal of such material in connection with the services performed and/or work products provided under this Agreement by Contractor or any of its officers, agents, servants, employees, subcontractors or subcontractors of any tier; and

(iii) a release by Contractor or any of its officers, agents, servants, employees, subcontractors or subcontractors of any tier in its or their performance hereunder of any substance or material defined or designated as a hazardous or toxic substance, material or waste by any federal, state or local law or environmental statute, regulation or ordinance presently in effect, or as amended or promulgated in the future, but only to the extent that such release is not proximately contributed to or caused by El Dorado Transit or its directors, officers or employees.

The parties shall establish procedures to notify the other party where appropriate of any claims, administrative actions or legal actions with respect to the matters described in this indemnification provision. The parties shall cooperate in the defense of such action brought by others with respect to the matters covered in this indemnity. Nothing set forth in the Agreement shall establish a standard of care for, or create any legal rights in, any person not a party to this Agreement. The provisions of this section shall survive any termination or expiration of this Agreement.

12. Insurance

A. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and it will comply with such provisions before commencing the performance of the work of this Agreement. Contractor and subcontractors will keep workers' compensation insurance for their employees in effect during all work covered by this Agreement. Contractor shall furnish to El Dorado Transit a certificate of waiver of subrogation under the terms of the workers' compensation insurance and Contractor shall similarly require all its subcontractors and agents to waive subrogation.

B. Commercial General Liability Insurance of not less than \$1,000,000 per occurrence (\$2,000,000 general and products-completed operations aggregate (if used)) for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2501 or insurer's equivalent endorsement provided to El Dorado Transit) or the general aggregate limit shall be twice the required occurrence limit.

C. Automobile liability of at least \$500,000 is required in the event motor vehicles are used by the Contractor and/or any subcontractor in the performance of the Agreement. One million dollars (\$1,000,000) per accident for bodily injury and property damage combined single limit.

D. For the purpose of this agreement there is no requirement for professional liability coverages.

E. Contractor and/or any subcontractor shall furnish a certificate of insurance satisfactory to the El Dorado Transit Executive Director as evidence that the insurance required above is being maintained.

F. The insurance shall be issued by an insurance company acceptable to the Executive Director, or be provided through partial or total self-insurance, likewise acceptable to the Executive Director.

G. Contractor and/or any subcontractor agree that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage

expires at any time or times during the term of this Agreement, Contractor and/or any subcontractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the Agreement there, or for a period of not less than one (1) year. New certificates of insurance are subject to approval of the Executive Director and Contractor and/or any subcontractor agree that no services shall be performed prior to such approval. In the event Contractor and/or subcontractor fail to keep in effect at all time insurance coverage as herein provided, El Dorado Transit may, in addition to any other remedies it may have, terminate this Agreement.

H. The certificate of insurance must include the following provisions stating that: (1) The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to El Dorado Transit, and, (2) El Dorado Transit, its directors, officers, employees, agents and volunteers are included as additional named insureds for all operations under this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to El Dorado Transit, its directors, officers, employees, agents or volunteers.

I. Contractor's and/or any subcontractor's insurance shall be primary in respect to El Dorado Transit. Any insurance maintained by El Dorado Transit shall be excess of Contractor and/or subcontractor and shall not contribute with it.

J. Any deductibles or self-insured retentions must be declared and approved by El Dorado Transit. At El Dorado Transit's option, either: Insurer shall reduce or eliminate such deductibles or self-insured retentions; or Contractor and/or any subcontractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to El Dorado Transit.

L. The insurance companies shall have no recourse against El Dorado Transit for payment of any premiums or assessments under any policy issued by any insurance company.

M. Contractor's and/or any subcontractor's obligations shall not be limited by the foregoing requirements and shall survive expiration of this Agreement.

N. In the event Contractor and/or any subcontractor cannot provide an occurrence policy, Contractor and/or any subcontractor shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of this Agreement.

O. Certificates of insurance shall meet such additional standards as may be determined by El Dorado Transit either independently or in consultation with the Executive Director, as essential for protection of El Dorado Transit.

13. Health, Safety, Fire and Environmental Protection

A. The Contractor and/or any subcontractor or agent shall comply with federal, state and local requirements pertaining to safety, health, fire and environmental protection.

B. In the event standards conflict, the standard providing the highest degree of protection and not in violation of any other applicable standard or law shall prevail.

14. Termination, Cancellation, Expiration

A. Cancellation for Breach

El Dorado Transit may cancel this Agreement for breach if:

- (i) Contractor fails to perform any of its obligations in accordance with the Agreement.
- (ii) Contractor files a petition in bankruptcy or for reorganization.
- (iii) Contractor becomes insolvent.

If El Dorado Transit elects to cancel this Agreement for breach, El Dorado Transit shall provide Contractor written Notice of Cancellation. Contractor shall have thirty (30) days from receipt of such Notice to cure the breach, or such longer times as may be set forth in the Notice of Cancellation. If the breach is not cured to El Dorado Transit's written satisfaction, then cancellation of the Agreement shall become effective on the date specified by El Dorado Transit's Notice of Cancellation. Notice of written satisfaction shall not be unreasonably withheld. In the event that the Agreement is canceled for breach, El Dorado Transit may complete the services hereunder with its own forces or may enter into a new contract.

El Dorado Transit shall be entitled to recover from Contractor all loss, cost or damage reasonably incurred by El Dorado Transit to provide the same level of services as set forth in the Agreement had the Agreement not been canceled for breach, and/or obtain any relief available at law or equity.

B. After Notice of Cancellation, Termination or Expiration

At least thirty (30) days prior to the effective date of cancellation, termination, or expiration, Contractor shall give thirty (30) days' notice of termination to all its existing advertisers unless El Dorado Transit designates a longer notice period. Upon the effective date of cancellation or termination of this Agreement, Contractor shall remove all advertising, or shall assign all advertising contracts and revenues to El Dorado Transit upon terms and conditions mutually agreed upon by the parties.

C. Notice of Expiration

Six months prior to the expiration of this contract El Dorado Transit may send Contractor a notice of expiration and request a meeting to discuss winding up of the contract, the potential advertisement for the award of a new contract, or the possible extension or renewal of this contract.

D. Transition/Carryover of Advertising Contracts

A "Carryover Contract" is defined as any advertising contract that extends beyond the termination or expiration of this Agreement. If upon termination or expiration of this Agreement, the Contractor is not awarded a subsequent Agreement, El Dorado Transit shall include in its Agreement with the successor firm, or El Dorado Transit, a requirement that such firm shall pay to contractor 15% of the net billings of any assigned Carryover Contracts for a period of six months after the expiration of this Agreement.

15. Third Party Obligations

Contractor shall be solely liable to third parties with whom it enters into contract to effectuate the purposes of this Agreement. Contractor shall pay directly such parties for all amounts due under said arrangement. Contractor shall indemnify and hold El Dorado Transit harmless from any and all claims and liabilities arising from any third party contracts. Contractor shall exert its best efforts to prevent any loss to El Dorado Transit from the failure of proper performance of any third party.

16. Workers' Compensation

El Dorado Transit shall not be responsible for providing workers' compensation insurance or any other protective insurance coverage that is based upon the relationship of employer and employee.

17. Assignment of Work

Contractor may not assign this agreement or any of its rights or obligations hereunder or the ownership interest of Contractor to any person or entity without the prior written consent of El Dorado Transit. Nothing herein shall prevent Contractor from subcontracting out the work performed by Contractor herein, provided that Contractor shall remain responsible for the work of its subcontractors.

18. Independent Contractor

El Dorado Transit and the Contractor agree that Contractor is an independent Contractor, and is not an officer or employee of El Dorado Transit. Contractor shall be solely responsible for the conduct and control of the work performed under this Agreement. All labor, materials and equipment necessary to complete the work shall be provided by the Contractor. Contractor shall

be free to render services to others during the term of this Agreement, so long as such activities do not interfere or conflict with Contractor's responsibility or fiduciary duty to Transit.

Contractor exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment. Contractor shall assume all responsibility for its employees for federal and state income tax withholding, FICA, SDI, and any other deductions from income that Contractor is property required to make as an independent Contractor.

19. Maintenance of Records/Audit Rights

Contractor shall keep such true and accurate accounts, records, books and data pertinent to the performance of this Agreement. Contractor shall use appropriate accounting methods to fully disclose all gross advertising sales information in a form approved by El Dorado Transit. Such completed forms shall be submitted with each respective monthly payment. Contractor shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement, and make such materials available at their respective offices at all reasonable times throughout the term of this Agreement to El Dorado Transit or its agents and for five (5) years after expiration or termination of this Agreement. In the event that El Dorado Transit desires to audit the books and records of Contractor pertaining to this contract, El Dorado Transit may engage a Certified Public Accountant ("CPA") to conduct the audit, shall pay for the audit, and shall give reasonable notice to Contractor prior to such audit. This section shall survive the expiration or termination of this Agreement. El Dorado Transit shall have the right to inspect and audit Contractor's accounting books, records and documents during normal business hours.

20. Nonwaiver

Waiver of any breach or default hereunder shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Agreement.

21. Modification

No waiver, alteration, modification, or termination of this Agreement shall be valid unless made in writing and full executed by the duly authorized officers of the parties hereto.

22. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

23. Captions

The headings of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part hereof.

24. Severability

If any term, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable the remainder of this Agreement shall remain in full force and effect. If the entire Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable the Agreement shall automatically be deemed canceled and neither party shall be responsible for any damages, costs, fees or lost revenue.

25. Survivorship

Any responsibility of Contractor for warranties, insurance or indemnity with respect to this Contract shall not be invalidated due to the expiration, termination or cancellation of this Contract.

26. Relationship Between the Parties

Nothing in these Agreement documents are intended to create, and nothing herein shall be considered as creating any partnership, joint venture or agency relationship between El Dorado Transit and Contractor. The payment of revenue from advertising on a percentage basis is adopted by the parties hereto solely as a convenient means of measuring said revenue to be paid for the rights and purposes herein granted.

27. Nondiscrimination

Contractor, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of any basis listed in subdivision (a) of Section 12940 of the Government Code, as amended from time to time, in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

28. Solicitation for Subcontracts, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurement of material or leases of equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Agreement relative to nondiscrimination on the grounds of any basis listed in subdivision (a) of Section 12940 of the Government Code, as amended from time to time.

29. Third Party Beneficiary

Nothing in this Agreement is intended to, nor shall anything in this Agreement be

construed to, benefit any third party.

30. Communications

Any communications required during the administration of this Agreement, including notice of termination or cancellation, shall be addressed to the respective parties as follows:

EL DORADO TRANSIT: El Dorado County Transit Authority
ATTN: Matthew Mauk, Executive Director
6565 Commerce Way
Diamond Springs, CA 95619
Phone: (530) 642-5383, Ext. 210

CONTRACTOR: _____

31. Ambiguities

The parties have each carefully reviewed this Agreement and have agreed to each term of this Agreement. Both parties have engaged counsel and negotiated the term of the Agreement. No ambiguity shall be presumed to be construed against either party.

32. Integration

The Agreement embodies the entire agreement of the parties in relation to the scope of services herein described, and no other understanding whether verbal, written or otherwise exists between the parties.

33. Maintenance and Repair of Bus Shelters

Contractor shall routinely clean and maintain bus shelters no less than twice weekly, including cleaning advertising panels, removing trash around shelters and removing any graffiti or unauthorized posting. Contractor shall provide similar maintenance service to the Missouri Flat Transfer Center no less than three (3) times per week.

Contractor, at its sole cost and expense, shall maintain, clean and repair existing bus shelters and all new bus shelters with advertising panels, after they are constructed. Damage to existing and new bus shelters caused by vandalism shall be included in Contractor's responsibility under this section.

Contractor will respond immediately upon notification if an advertising bus shelter requires extra cleaning, maintenance or repair due to planned or unforeseen issues. Contractor will make every effort to resolve the maintenance issue within the same day, but no later than twenty-four (24) hours, following notification. If Contractor is unable to resolve the maintenance

issue by 5:00 pm the same day, it will notify El Dorado Transit with a plan of action and schedule to take care of the issue within the required timeframe.

34. Waiver of Claims Against Transit

Contractor hereby waives any claim against El Dorado Transit, its officers, employees or agents, for damage or loss caused by any suit or proceeding directly or indirectly attacking the validity of this Agreement, or any part thereof or by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable or delaying the same or any part thereof from being carried out, or for breach or nonperformance of this Agreement.

In addition, Contractor acknowledges that this Agreement includes provisions granting to El Dorado Transit the right to terminate this Agreement and upon such termination to order the removal of and/or itself remove the advertising that Contractor installed on El Dorado Transit's bus shelters pursuant to this Agreement. Contractor fully waives, releases, and relinquishes forever any and all claims, demands, rights and causes of action that it may have against El Dorado Transit under California Business and Professions Code Section 5200, et seq., any amendments thereto or other future laws, for any compensation from El Dorado Transit not otherwise provided herein, including the payment of just compensation, as defined in the eminent domain law (Title 7, commencing with Section 1230.010, of Part 3 of California Code of Civil Procedure), in the event El Dorado Transit exercises any such rights in accordance with the provisions of this Agreement.

In connection with the foregoing release, Contractor acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

Contractor acknowledges that the release contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Contractor realizes and acknowledges that it has entered into this Agreement in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of California Civil Code, Section 1542, or any statute or other similar provision now or later in affect. The releases contained herein shall survive any termination or expiration of this Agreement.

35. Taxes

Any federal, state or local taxes levied upon this Agreement, or the transaction, shall be borne by the Contractor. These taxes shall include, but not be limited to, sales taxes.

36. Attorney's Fees

In the event suit is brought by either party to enforce the terms and provisions of this Agreement or to secure the performance hereof, the prevailing party shall be entitled to recover attorney's fees and costs of litigation.

37. Controlling Law and Venue

This Agreement shall be deemed to be made in, and the rights and liabilities of the parties, and the interpretation and construction of the Agreement determined in, accordance with the laws of the State of California. Any controversy arising out of or under this Agreement, if litigated, shall be adjudicated in a court of competent jurisdiction in El Dorado County, California.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the day and year first hereinabove appearing.

**EL DORADO COUNTY
TRANSIT AUTHORITY**

By: _____

By: _____
Matthew Mauk, Executive Director

FID: _____
Corporate Seal

By: _____
Michael Tucker
Legal Counsel for El Dorado Transit
Approved as to Legal Form