

AGENDA ITEM 2 A
Action Item

MEMORANDUM

DATE: April 1, 2021

TO: El Dorado County Transit Authority

FROM: Matthew Mauk, Executive Director

SUBJECT: Proposed Memorandum of Understanding for Operation of a South Lake Tahoe Express Commuter Service

REQUESTED ACTION:
BY MOTION,

- 1. Review and Approve the Draft Memorandum of Understanding (MOU) with the Capital Corridor Joint Powers Authority (CCJPA) for Operation of a South Lake Tahoe Express Commuter Service**
- 2. Authorize the Executive Director to Execute a Final MOU with the CCJPA, Pending Minor Changes and Final Approval of Legal Counsel**
- 3. Authorize the Executive Director to Finalize and Execute Other Third-Party Agreements Necessary for Reservations/Ticketing, Maintenance, Vehicle Staging and Passenger Facilities Utilized in the Operation of the Proposed Tahoe Express Service**

BACKGROUND

California Senate Bill 742 was passed in 2019 and amended SEC. 2. Section 14035.55 of the Government Code authorizing the State's three (3) State-supported intercity passenger rail lines to sell stand-alone tickets for connecting motor coach services. As enacted, the law requires the intercity rail authorities that operate feeder bus service to collaborate with public transit operators that can provide these services and to avoid conflicts with existing public transit service. The El Dorado County Transit Authority (El Dorado Transit) currently provides commuter service from Placerville to Sacramento along the same corridor used by the region's intercity thruway bus network connecting to the Capital Corridor passenger trains operating out of the Sacramento Valley Station in downtown Sacramento.

The Capital Corridor Joint Powers Authority (CCJPA) currently contracts with Amtrak which in turn uses a contractor to operate one (1) round trip bus per day between the Sacramento Valley Station and the City of South Lake Tahoe. The CCJPA contacted El Dorado Transit in July 2020 to discuss the potential of partnering on the operation of this daily Sacramento to South Lake Tahoe bus service.

The adopted Western El Dorado County 2019 Short- and Long-Range Transit Plan (SRTP) recommends exploring partnerships with other regional transit agencies for these types of services. In evaluating the potential of partnering with the CCJPA on a Sacramento to South Lake Tahoe daily service, El Dorado Transit staff consulted the El Dorado County Transportation Commission (EDCTC), the Tahoe Regional Transportation Planning Agency, the Tahoe Transportation District (TTD), and LSC Transportation Consultants, Inc. (LSC) who authored the 2019 SRTP. On October 1, 2020, the Board received a Tahoe Service Analysis Report prepared by LSC and directed staff to continue with negotiations and service implementation planning.

DISCUSSION

The attached draft MOU is the result of work by El Dorado Transit staff, CCJPA staff and their agency's respective legal counsels to formalize a partnership agreement that provides for El Dorado Transit to assume operation of the daily Sacramento to South Lake Tahoe bus service starting in July 2021. Included in the MOU are terms and conditions for cost and/or revenue sharing, service delivery, interagency coordination and planning, fare policy and legal obligations. The proposed agreement covers service for an initial three (3) year demonstration period unless terminated by one or both of the parties earlier.

Under the terms of the proposed agreement, the parties will meet regularly to review and coordinate on issues including ongoing costs, service schedules and marketing. El Dorado Transit retains sufficient autonomy under the MOU to control the day-to-day operations and handle service interruptions or emergencies at their discretion and without penalty.

With the requested actions, staff is recommending Board approval of the principal terms and conditions in the draft MOU and authorization for the Executive Director to negotiate any minor remaining issues in consultation with the CCJPA and legal counsel. If so directed and pending approval by the CCJPA Board, the Executive Director will execute the final agreement with CCJPA in time for a scheduled July 5th starting date for the service.

In addition to the MOU with CCJPA, providing the Sacramento to South Lake Tahoe bus service and utilizing the bus stops in Sacramento and South Lake Tahoe will require agreements with outside agencies and/or organizations. These include at a minimum, agreements with Amtrak for ticketing/scheduling of connecting train passengers and fare reconciliation; the TTD for use of the transit centers in South Lake Tahoe; and the City of Sacramento for use of the Sac Valley Station. Additional contracts may be necessary to facilitate vehicle staging during layovers in S. Lake Tahoe, emergency lodging, roadside maintenance and/or vehicle storage. Staff is requesting authorization to execute these third party agreements, as needed, provided any associated costs are within the Executive Director's established purchasing authority and adopted operating budgets.

FISCAL IMPACT

The proposed MOU creates a 50/50 net operating cost sharing agreement between El Dorado Transit and the CCJPA for the Tahoe Express Service, billed quarterly. Under this arrangement, El Dorado Transit will retain the fare revenues collected on the service and the remaining operating costs would be split between the two (2) parties. Based on recent historical data and the established fare structure, staff is estimating the fare revenue to be approximately \$19 one-way per passenger boarding on average. Per the analysis performed by LSC and presented to the Board in October, the annual ridership is expected to be approximately 9,850 trips in FY 2021/22 and 12,310 in FY 2022/23. In this scenario, El Dorado Transit's 50% share of the operating subsidy would be an estimated \$91,405 and \$69,995 in FY 2021/22 and FY 2022/23, respectively. FY 2023/24 was not analyzed in detail but if ridership returns to pre-COVID projections of 15,000 annual trips by the third year of the proposed contract, El Dorado Transit's portion of the subsidy would fall to approximately \$50,000.

The first year's estimated operating subsidy for the South Lake Tahoe Service is included in the FY 2021/22 Operating Budget as presented later in this agenda.

**EL DORADO COUNTY TRANSIT AUTHORITY
AND
CAPITOL CORRIDOR JOINT POWERS AUTHORITY
MEMORANDUM OF UNDERSTANDING
FOR THRUWAY BUS SERVICE BETWEEN SACRAMENTO AND SOUTH LAKE
TAHOE**

This Memorandum of Understanding, is made and entered into this 1st day of July 2021 by and between the El Dorado County Transit Authority (“El Dorado Transit”) and Capitol Corridor Joint Powers Authority (“CCJPA”) collectively “Parties” or individually as “Party.”

I. Recitals

- 1.01 **El Dorado Transit** is a joint powers authority whose primary objective is providing public transportation on the Western Slope of El Dorado County with its principal office located at 6565 Commerce Way, Diamond Springs, CA 95619.
- 1.02 **CCJPA's** primary responsibility is the operation of train and bus service on the Capitol Corridor (San Jose/Oakland/Sacramento/Auburn) Route. CCJPA receives funds from Caltrans and uses these funds to contract with Amtrak, pursuant to the Caltrans/Amtrak Contract, for rail and bus service along the Capitol Corridor Route. CCJPA's principal office is located at 300 Lakeside Drive, 14th Floor East, Oakland, CA 94612.

II. Responsibilities of the Parties

2.01 South Lake Tahoe Commuter Service

Commencing July 5, 2021, El Dorado Transit will expand their existing Sacramento Commuter service to include service to South Lake Tahoe, using its own coach operators and equipment (the “South Lake Tahoe Commuter Service” or the “Service”). The South Lake Tahoe Commuter Service will operate between the Sacramento Valley Station and South Lake Tahoe in accordance with the schedule and route information that is attached hereto and incorporated herein by reference as Exhibit A; Sacramento Commuter Schedule, Routing, and Fare Rate for modified and expanded service.

2.02 Service Levels

The South Lake Tahoe Commuter Service shall be provided by El Dorado Transit as follows:

1. One (1) daily weekday (Monday – Friday) roundtrip service between Sacramento Valley Station and South Lake Tahoe;
2. One (1) Saturday roundtrip and one (1) Sunday roundtrip service between Sacramento Valley Station and South Lake Tahoe; and

3. One (1) daily roundtrip service between Sacramento Valley Station and South Lake Tahoe on the following (11) holidays, as observed by El Dorado Transit:
 - a. New Year's Day
 - b. Martin Luther King Jr.'s Birthday
 - c. President's Day
 - d. Memorial Day
 - e. Independence Day
 - f. Labor Day
 - g. Veteran's Day
 - h. Thanksgiving Day
 - i. Friday After Thanksgiving
 - j. Christmas Eve
 - k. Christmas Day

2.03 Schedule Deviation

El Dorado Transit will operate the South Lake Tahoe Commuter Service to the best of its ability to adhere to agreed upon schedules, but the parties recognize that the Service may be off schedule due to traffic, weather, detours, accidents, strikes, nationally declared disasters and other situations and circumstances beyond El Dorado Transit's control. El Dorado Transit will not be held liable for such off-schedule trips or missed trips.

2.04 Additional Services

The Parties may request from time-to-time additional bus service(s), which includes, but may not be limited to, services in addition to those provided in Exhibit A or described in Section 2.02. El Dorado Transit will review its operational ability to provide such additional services and give CCJPA at least ninety (90) days' notice of a decision. El Dorado Transit has sole discretion in approving any additional bus services.

2.05 Emergency Services

El Dorado Transit shall have the sole discretion to provide emergency services including, but not limited to, passenger overflow, mechanical breakdown, traffic events, act(s) of God, and/or accidents, without approval of CCJPA. El Dorado Transit shall provide electronic notification to CCJPA within 24 hours of initiating emergency service. The cost for any emergency services shall be shared equally between the Parties.

2.06 Schedule and Route Changes

In the event a party desires to change the schedule or route for the South Lake Tahoe Commuter Service to provide connections at Sacramento Valley Station between the Sacramento Commuter Service, the Capitol Corridor Rail Service, and affected services, the requesting party shall notify the other party of the request. The party receiving the request shall respond within five (5) business

days. In the event of a dispute, El Dorado Transit shall have final authority to accept or deny the request. El Dorado Transit shall be responsible for producing schedules for the South Lake Tahoe Commuter Service.

2.07 Bus Features

El Dorado Transit will provide an identified location on the bus for storage of traveler's personal items such as bicycles, luggage, and snow sports equipment. El Dorado Transit will provide limitations on amount and size of luggage and other personal items, as mutually agreed by the parties. CCJAP and El Dorado Transit will mutually agree upon bus features for current and any future buses procured by El Dorado Transit for the Lake Tahoe Commuter Service. In the event of a dispute, El Dorado Transit shall have final authority for approval over any bus features. El Dorado Transit may use a bus without the agreed upon features when providing emergency services as described in Section 2.05.

2.08 Decals

El Dorado Transit shall affix Capitol Corridor decals, no larger than 20 inches in diameter to the sides of buses designated for the South Lake Tahoe Commuter Service. A rail safety message decal that is provided through the partnership between CCJPA and California Operation Lifesaver and is approved by the parties shall be affixed to the rear of each bus designated for the South Lake Tahoe Commuter Service.

2.09 Quarterly Meetings

Representatives of the parties shall meet quarterly or as needed to discuss the Service, marketing, connections, fares, actual service costs, any necessary adjustments based on the actual services costs, and other issues related to the Service. El Dorado Transit will coordinate the scheduling of such meetings and will convene the meetings at a location as convenient as possible for the parties. The representatives of the Parties may agree to modify the Service's routing and schedule.

III. Cost Calculations, Payment and Revenue Credits

3.01 Operating Costs and Payments

The cost to provide the South Lake Tahoe Commuter Service shall be calculated by El Dorado Transit and shared equally between the parties after farebox revenue is calculated and applied. Farebox revenue shall be collected by a Third-Party ticketing vendor. El Dorado Transit shall invoice CCJPA on a quarterly basis for CCJPA's portion of the cost. The Sacramento-South lake Tahoe Service Cost Summary incorporated herein by reference as Exhibit B, shall accompany all invoices to identify services rendered during the invoiced quarter. Revenue credits, which are available funds after all operating costs have been paid, will be split between the Parties evenly. Parties may agree to reinvest revenue credits into

the service, for capital improvements, new equipment, additional service frequencies, etc.

3.02 Service Increments Fare Revenue

The passenger fare revenue that is attributable to the South Lake Tahoe Commuter Service as operated by El Dorado Transit under this agreement, shall be derived from the following two sources: a.) bus fare revenue associated with local passengers (non-transfers) and b.) bus fare revenue associated with those passengers who have transferred directly from, or are transferring to the Capitol Corridor train service. The parties understand that fares associated with transferring passengers may be prorated and/or discounted according to Amtrak's established fare policies. All fares attributable to the South Lake Tahoe Commuter Service shall be collected and retained by El Dorado Transit, either directly or through third-party ticketing agreements, and shall be deducted from the parties' shared costs according to El Dorado Transit's cost calculation described in Section 3.01.

3.05 Wi-Fi Costs

El Dorado Transit and CCJPA will share equally in the cost of Wi-Fi service for the Lake Tahoe Commuter Service. El Dorado Transit shall include this cost in the quarterly invoice to CCJPA described in Section 3.01.

IV. Fares

4.01 One-Way Cash Fare

The parties agree to apply a one-way cash fare for the South Lake Tahoe Commuter Service. Fare rates, which shall be adhered to by the Parties, are set forth in the Sacramento Commuter schedule, routing, and Service Fare Rate attached as Exhibit A. Any subsequent changes to the fares for the Service is within the sole jurisdiction of El Dorado Transit. However, El Dorado Transit shall solicit input from CCJPA prior to the implementation of any fare adjustment.

4.02 Both parties shall recognize and apply any and all fare discounts recognized by either party. CCJPA must notify El Dorado Transit thirty (30) days in advance of any fare discount or promotional fare or the elimination of such fares and promotional discounts not in place at the time of execution of this Memorandum of Understanding.

V. Mutual Aid/Roadside Assistance Reimbursement

5.01 The parties agree that all costs for emergency repairs or mutual aid from another transit agency or roadside assistance from a third party shall be shared equally between the parties.

VI. Term and Termination

- 6.01 The term of this Memorandum of Understanding is from July 01, 2021 through June 30, 2024.
- 6.02 The Parties may agree in writing to extend this Memorandum of Understanding, for additional periods of time as may be agreed on by the parties.
- 6.03 Any Party may give notice of its intent to terminate participation in this Memorandum of Understanding without cause by giving at least six (6) months advance written notice to the other Party. The termination shall be effective as to all Parties on the first day of the month following the six (6) month notice period. Prior to termination all compensation and revenues due from one party to the other under this Memorandum of Understanding shall be paid and any loaned equipment and materials shall be returned to their respective owners.

VII. General Provisions

7.01 Independent Contractor

No relationship of employer and employee is intended or created by this Memorandum of Understanding. In the performance of its work and duties, El Dorado Transit is at all times acting and performing as a public entity providing public transportation services. CCJPA shall neither have nor exercise control or direction over the methods by which El Dorado Transit performs the Services pursuant to this Memorandum of Understanding; provided, however, that El Dorado Transit agrees that all work performed pursuant to this Memorandum of Understanding shall be in strict accordance with currently approved and generally accepted professional methods and practices. The sole interest of the parties is to ensure that such Services are performed and rendered in a competent and cost-effective manner and in accordance with this Memorandum of Understanding.

7.02 Federal, State and Local Laws

The Parties warrant that in the performance of this Memorandum of Understanding, each party shall comply with all applicable Federal, State, and local laws, regulations, and ordinances.

7.03 No Conflict of Interest

Each party represents that it currently has no interest, and shall not have any interest, direct or indirect, that would conflict in any manner with the performance of services required under this Memorandum of Understanding.

7.04 Time of the Essence

Time is of the essence in this Memorandum of Understanding.

7.05 Cross Promotional/Marketing/Ridership

- a) Parties agree to promote the Lake Tahoe Commuter Service and to cooperate to develop marketing campaigns that promote this Service. Each Party shall be responsible for funding and disseminating marketing/information through their respective marketing channels. Each party shall maintain their best efforts in providing such marketing/information dissemination focused on areas with the highest likelihood of increasing ridership.
- b) Each Party agrees to submit to the other Parties any and all advertising, sales promotion, and other publicity materials relating to the Lake Tahoe Commuter Service in which any party's name is mentioned, inferred, or implied. Each party further agrees not to publish or use any such advertising, sales promotion, or publicity materials relating to Lake Tahoe Commuter Service without the prior written consent of the other Parties.

7.06 Consent to Breach Not Waiver

No term or provision hereof shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.

7.07 Addition of Transit Agencies to the Memorandum of Understanding

The parties may include additional transit agencies to this Memorandum of Understanding upon mutual approval of the parties and incorporated into the Memorandum of Understanding by amendment. Additional transit agencies will be required to participate in funding the route by the amount approved by the parties.

7.08 Non-Assignment

No Party shall encumber, assign, or otherwise transfer any right or interest in this Memorandum of Understanding without prior express written consent of each of the parties. A consent to one assignment shall not be deemed to be a consent to any subsequent assignment. Any encumbrance, assignment, transfer or assignment of interest in this Memorandum of Understanding without prior written permission or consent of the parties, whether it be voluntary or involuntary by operation of law or otherwise, is void and shall be just cause at the option of the other Party to terminate this Memorandum of Understanding.

7.09 Notices

All notices under this Memorandum of Understanding shall be deemed duly given upon delivery, if delivered by hand; or three days after posting, if sent by

registered mail, return receipt requested; to a party hereto at the address set forth herein or to such other address as a party may designate by notice pursuant hereto:

El Dorado County Transit Authority:

Executive Director
El Dorado Transit Authority
6565 Commerce Way
Diamond Springs, CA 95619

Capitol Corridor Joint Powers Authority:

Managing Director
Capitol Corridor Joint Powers Authority
1000 Broadway, Suite 604
Oakland, CA 94607

7.10 Mutual Indemnification

Each Party will indemnify, hold harmless, and defend the other Party, its directors, board members, officers, employees, and agents against any and all liability, claims, suits, actions, injuries, costs or expenses arising from loss of or damage to property, and injuries to or death of any person (including but not limited to employee property or employees of each Party) when arising out of or resulting from any act or omission by the indemnifying Party, its agents, employees, contractors, or subcontractors in connection with any aspect of the Services provided or activities performed pursuant to this Memorandum of Understanding.

This indemnification will survive termination or expiration of this Memorandum of Understanding.

7.11 Insurance

El Dorado Transit will provide insurance and will maintain a minimum insurance coverage as follows:

- a. General Liability Insurance coverage for property damage and bodily injury in the amount of ten million dollars (\$10,000,000), with a deductible not to exceed \$250,000 per occurrence covering the Services to be performed by El Dorado Transit. The policy shall contain the coverages and exclusions contained in the policy.
- b. Excess Liability Insurance coverage for property damage and personal injury in excess of the insurance provided for in subdivision (i) above, in the amount of fifteen million dollars (\$15,000,000), generally covering the services to be performed by El Dorado Transit. The policy shall contain the coverages and exclusions contained in the policy.

7.12 Amendment

This Memorandum of Understanding may be amended at any time by mutual agreement of the Parties, but any such amendment must be in writing, dated, signed by an authorized representatives of each Party and attached hereto.

7.13 Governing Law

This Memorandum of Understanding is governed by and construed in accordance with the laws of California.

7.14 Entire Memorandum of Understanding

This Memorandum of Understanding, together with all subordinate and other documents incorporated by reference herein, constitutes the entire Memorandum of Understanding between the Parties with respect to the subject matter contained herein and may only be modified by an amendment executed in writing by both parties hereto. All prior agreements, representations, statements, negotiations, understandings and undertakings are superseded.

7.15 Authority

Each Party has full power and authority to enter into and perform this Memorandum of Understanding, and the person signing this Memorandum of Understanding on behalf of each has been authorized and empowered to enter into this Memorandum of Understanding. Each party further acknowledges that it has read this Memorandum of Understanding, understands it, and agrees to be bound by it.

7.16 Severability

Should any term or provision of this Memorandum of Understanding be determined to be illegal or in conflict with any law of the State of California, the validity of the remaining portions or provisions shall not be affected thereby, and each term or provision of this Memorandum of Understanding shall be valid and be enforced as written to the full extent permitted by law.

7.17 Arbitration

All disputes arising out of this Memorandum of Understanding shall be submitted to final and binding arbitration. The arbitrator shall be selected in accordance with the rules of the Judicial Arbitration and Mediation Services (JAMS). If such services are not available, the dispute shall be submitted to arbitration in accordance with the laws of the State of California. The arbitrator's award shall be final, and judgment may be entered upon it by any court having jurisdiction thereof. The parties agree that all actions or proceedings arising in connection with this Memorandum of Understanding shall be tried only in Alameda County or another mutually agreeable location.

IN WITNESS THEREOF, this Memorandum of Understanding is executed by the El Dorado County Transit Authority, Capitol Corridor Joint Powers Authority, San Joaquin Joint Powers Authority, and is effective on the day and year first hereinabove written.

EL DORADO COUNTY TRANSIT AUTHORITY (EL DORADO TRANSIT):

BY: _____
Matthew Mauk, Executive Director

DATE: _____

CAPITOL CORRIDOR JOINT POWERS AUTHORITY (CCJPA)

BY: _____ DATE: _____
Robert Padgette
Managing Director

DATE: _____