

AGENDA ITEM 2 D  
Action Item

**MEMORANDUM**

**DATE:** September 5, 2024

**TO:** El Dorado County Transit Authority

**FROM:** Erik Bergren, Planning and Marketing Manager

**SUBJECT:** **Maintenance Facility Swamp Cooler Replacement Purchase Order and Contract**

**REQUESTED ACTION:**

**BY MOTION,**

- 1. Award contract for the performance of Maintenance Facility Swamp Cooler Replacement per RFP # 20-04**
- 2. Approve Purchase Order No. 30182**
- 3. Authorize the Executive Director to enter a Contract with Sub Zero HVAC Services pending legal review**
- 4. Authorize the Executive Director to approve change orders up to the CIP budget amount**

**BACKGROUND**

In 2001, two (2) industrial swamp coolers were installed on the exterior of the maintenance facility at the El Dorado County Transit Authority (El Dorado Transit) to provide environmental control for maintenance staff performing maintenance in the three (3) bays. Over time, these large units have aged and require extensive maintenance. They no longer provide the necessary cooling needed for personnel.

The replacement of the swamp coolers in the maintenance facility is included in the El Dorado Transit Capital Improvement Plan (CIP) as project No. 20-04. El Dorado Transit published a Request for Quotations (RFQ) for the Maintenance Facility Swamp Cooler Replacement in mid-July. This project will remove the existing units, patch the metal siding, replace or rehabilitate the racking, install new swap coolers, and install new ducting inside the building.

**DISCUSSION**

In response to the RFQ, Transit received three quotations from interested contractors: Acco Engineered Systems, Inc, Ski Air, and Sub Zero HVAC Services. Transit staff and the project consultant Feild & Associates reviewed the three quotations on August 26, 2024. Sub Zero was the lowest responsible bidder at \$26,198.

Staff recommends that the Board award the contract for the performance of Maintenance Facility Swamp Cooler Replacement per RFP # 20-04 to Sub Zero HVAC Services, approve Purchase Order 30182, authorize the Executive Director to enter into a Contract with Sub Zero HVAC Services with the form and content of the contract being subject to review and approval by the El Dorado Transit Legal Counsel, and authorize the Executive Director to approve change orders up to the CIP budget amount of \$70,325.

**FISCAL IMPACT**

*COST SUMMARY (ESTIMATE)*

	<u>Proposed Budget</u>
Maintenance Facility Swamp Cooler Replacement Project	<u>\$26,198</u>
<i>Total Cost</i>	<u>\$26,198</u>

*FUNDING SOURCES*

Transportation Development Act (TDA)	<u>\$26,198</u>
<i>Total Revenue</i>	<u>\$26,198</u>

**EL DORADO COUNTY TRANSIT AUTHORITY**  
**6565 COMMERCE WAY**  
**DIAMOND SPRINGS, CA 95619-9454**  
**(530) 642-5383**

**PURCHASE ORDER NO. 30182**

THIS NUMBER MUST APPEAR ON ALL INVOICES,  
 PACKING LISTS, PACKAGES, AND BILLS OF LADING.

**DATE: 8/28/24**

ACCOUNT: 9910.11      CLASS: 125

TO:  
 SUB ZERO HVAC SERVICES  
 2507 ELKHORN BLVD.  
 RIO LINDA, CA.  
 95673

SHIP & INVOICE TO:  
**EL DORADO COUNTY TRANSIT AUTHORITY**  
**6565 COMMERCE WAY**  
**DIAMOND SPRINGS, CA 95619-9454**

Contact: JOEL JOHNSTONE  
 Vendor Phone No: 916-521-2402      Fax No:

PROMISED DELIVERY DATE	TERMS: NET 30
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	F.O.B. DESTINATION
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QTY	UNIT	DESCRIPTION	UNIT PRICE	EXTENDED TOTAL
		MAINTENANCE FACILITY SWAMP COOLER REPLACEMENT PROJECT PER CIP PROJECT NO. 20-04.		\$26,198.00

I hereby certify that this purchase order is in accordance with procedures in the purchase manual governing of such items for El Dorado County Transit Authority.  <b>PURCHASING AGENT</b>	SUBTOTAL	\$26,198.00
	SHIPPING	
	SALES TAX	
	<b>TOTAL</b>	NTE: \$26,198.00

**PLEASE NOTE CONDITIONS ON REVERSE SIDE**

"This Purchase Order expressly limits acceptance to the terms and conditions stated herein, set forth on the reverse side and any supplementary or additional terms and conditions annexed hereto or incorporated herein by reference. Any additional or different terms and conditions proposed by seller are objected to and hereby rejected."



# **EL DORADO TRANSIT**

## **EL DORADO COUNTY TRANSIT AUTHORITY**

### **PROFESSIONAL SERVICES AGREEMENT**

**with**

### **SUB ZERO HVAC SERVICES**

**for**

### **MAINTENANCE FACILITY SWAMP COOLER REPLACEMENT**

THIS AGREEMENT, made and entered into this \_\_\_ day of September 2024, by and between El Dorado County Transit Authority, hereinafter referred to as "EL DORADO TRANSIT," and SUB ZERO HVAC SERVICES, hereinafter referred to as "CONSULTANT".

#### WITNESSETH

CONSULTANT and EL DORADO TRANSIT do mutually hereby agree as follows:

#### SECTION 1 - ORGANIZATION AND CONTENTS

- SECTION 1 ORGANIZATION AND CONTENTS
- SECTION 2 SCOPE OF CONSULTING SERVICES - BASIC
- SECTION 3 SCOPE OF CONSULTING SERVICES - ADDITIONAL;  
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- SECTION 4 NOTICE TO PROCEED AND EFFECTIVE DATE OF CONTRACT;  
PROGRESS; COMPLETION
- SECTION 5 TIME OF PERFORMANCE
- SECTION 6 COMPENSATION
- SECTION 7 CHANGES TO SCOPE - BASIC
- SECTION 8 COMPLIANCE WITH LAWS, RULES, and REGULATIONS
- SECTION 9 EXHIBITS INCORPORATED
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SECTION 23 INDEMNIFICATION  
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EXHIBIT A Proposal from CONSULTANT for Swamp Cooler Replacement

SECTION 2 - SCOPE OF CONSULTING SERVICES - BASIC; SCHEDULE

CONSULTANT agrees to perform all work described in Exhibit "A" attached hereto and incorporated herein by this reference as if set forth in full.

SECTION 3 - SCOPE OF CONSULTING SERVICES - ADDITIONAL

It is understood by EL DORADO TRANSIT and CONSULTANT that it may be necessary, in connection with this project, for CONSULTANT to perform or secure the performance of related services other than those set forth in Exhibit "A". In such instance, CONSULTANT shall advise EL DORADO TRANSIT, in advance and in writing, of the need for such additional services, their cost and the estimated time required to perform them (if appropriate). CONSULTANT shall not proceed to perform any such additional service until EL DORADO TRANSIT has determined that such service is beyond the scope of the basic services to be provided by CONSULTANT, is required, and has given its written authorization to perform or obtain it. Each additional service so authorized shall constitute an amendment to this Agreement.

SECTION 4 – PURCHASE ORDER AND EFFECTIVE DATE OF CONTRACT; PROGRESS; COMPLETION

Upon execution of this Agreement by the parties, EL DORADO TRANSIT shall give CONSULTANT a 'Purchase Order' for the work. Such notice may authorize CONSULTANT to render all of the services contemplated herein, or such portions or phases as may be mutually agreed upon. In the latter event, EL DORADO TRANSIT shall, in its sole discretion, issue subsequent notices from time to time regarding further portions or phases of the work. Upon receipt of such notices, CONSULTANT shall diligently proceed with the work authorized and complete it within the agreed time period.

SECTION 5 - TIME OF PERFORMANCE

CONSULTANT shall commence work within five (5) days following issuance of a Purchase Order. CONSULTANT shall complete the performance of its obligations under this Agreement in accordance with the dates and times indicated in Exhibit "A", unless an extension of time is granted in writing by EL DORADO TRANSIT, which said extension, if any, shall be

granted only for good cause as determined at the sole discretion of EL DORADO TRANSIT. CONSULTANT shall not be held responsible for delays beyond its reasonable control.

#### SECTION 6 - COMPENSATION

For services performed pursuant to this Agreement, EL DORADO TRANSIT agrees to pay and CONSULTANT agrees to accept as payment in full, all identified project costs on a cost reimbursement basis up to Twenty six thousand one hundred and ninety eight dollars (**\$26,198.00**) maximum amount.

CONSULTANT shall submit a bill each month upon successful completion of the monthly services outlined in said Exhibit A attached hereto. Payment shall be made by EL DORADO TRANSIT within thirty (30) days of receipt of the billing for the completed task. No statements shall be sent until the task has been accepted as complete by EL DORADO TRANSIT. It is mutually agreed between the parties that no payments made under the Agreement shall be conclusive evidence of the performance of the Agreement, either wholly or in part, against any claim of the CONSULTANT, and no payment shall be construed to be in acceptance of any defective work or improper materials.

#### SECTION 7 – ADDITIONAL WORK

In the event non-covered services on an hourly basis as set forth in Exhibit A are required, CONSULTANT shall submit a work order to EL DORADO TRANSIT listing the scope and cost of such services. CONSULTANT may proceed to complete such additional work upon receipt of written approval by EL DORADO TRANSIT. The costs for such additional work shall be submitted with the monthly bill and shall include a detailed explanation of the work performed, the individual completing the work, the date the work was performed and the hours spent in completing the work.

#### SECTION 8 - COMPLIANCE WITH LAWS, RULES, REGULATIONS

All services performed by CONSULTANT pursuant to this Agreement shall be performed in accordance and full compliance with professional standards regarding the interpretation of all applicable and non-conflicting Federal, State or City statutes as amended, and any rules or regulations promulgated thereunder, as interpreted by the appropriate enforcement agency at the time of performance of this project.

#### SECTION 9 - EXHIBITS INCORPORATED

All Exhibits referred to in this Agreement and attached to it are hereby incorporated in it by this reference.

#### SECTION 10 - RESPONSIBILITY OF CONSULTANT

By executing this Agreement, CONSULTANT warrants to EL DORADO TRANSIT that he/she possesses, or will arrange to secure from others, all of the necessary professional consulting capabilities, licenses, certifications, experience, resources and facilities to provide to EL DORADO

TRANSIT the services contemplated under this Agreement. CONSULTANT further agrees that he/she will follow the current, prevailing, generally accepted practice of the consulting profession to make findings, render opinions, prepare factual presentations, and provide professional advice and recommendations regarding the project for which services are rendered under this Agreement.

#### SECTION 11 - RESPONSIBILITY OF EL DORADO TRANSIT

In relation to the project/work described by this Agreement, EL DORADO TRANSIT shall:

- A. Assist CONSULTANT by placing at his/her disposal all available information pertinent to the project, including previous reports and any other relevant data;
- B. Guarantee access to and make all provisions for CONSULTANT to enter upon public and private property as required for CONSULTANT to perform his/her services;
- C. Examine all studies, reports, proposals and other documents presented by CONSULTANT, and render verbally or in writing as may be appropriate, decisions pertaining thereto within a reasonable time so as not to delay the services of CONSULTANT;
- D. Designate in writing a person to act as EL DORADO TRANSIT'S representative with respect to all work to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define EL DORADO TRANSIT'S policies and decisions with respect to materials, equipment, elements and systems pertinent to CONSULTANT'S services; and
- E. Furnish approvals and permits from all governmental authorities having jurisdiction over the project and such approvals and consents from others as may be necessary for completion of the Project.

#### SECTION 12 - TERM

The term of this Agreement shall commence upon EL DORADO TRANSIT'S issuance to CONSULTANT of a Purchase Order for all or a portion of the work as hereinabove provided and shall end upon EL DORADO TRANSIT'S acceptance and payment for such portion of the work as was authorized by such notice, but in no event beyond the Fiscal Year ending June 30, 2025.

#### SECTION 13 - TERMINATION FOR CONVENIENCE OF EL DORADO TRANSIT

EL DORADO TRANSIT may terminate this Agreement without cause at any time, including, but not limited to, during the initial five-year term of the agreement, by giving notice to CONSULTANT of such termination and specifying the effective date thereof, which must be at least sixty (60) days before the effective date of such termination. If the Agreement is terminated by EL DORADO TRANSIT, CONSULTANT shall be paid the agreed upon monthly cost of services up until the effective date of termination.

## SECTION 14 - TERMINATION OF AGREEMENT FOR CAUSE

A. EL DORADO TRANSIT may, by written notice to CONSULTANT, terminate the whole or any part of this Agreement in any one of the following circumstances:

1. If CONSULTANT fails to perform the services called for by this Agreement within the time(s) specified herein, or any extension thereof; or
2. If CONSULTANT fails to perform the services called for by this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in either of these two circumstances does not substantially begin to correct such failure within a period of ten (10) days (or such longer period as EL DORADO TRANSIT may authorize in writing) after receipt of notice from EL DORADO TRANSIT specifying such failure.

B. In the event EL DORADO TRANSIT terminates this Agreement in whole or in part as provided in Paragraph "A" above, EL DORADO TRANSIT may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

C. Except with respect to defaults of subcontractors, CONSULTANT shall not be liable for any excess costs if the failure to perform arises out of causes beyond the control and without the fault or negligence of CONSULTANT. Such causes include, but are not limited to, acts of God or of the public enemy, acts of government, in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, and unusually severe weather. In the event the failure to perform is caused by the default of a subcontractor, CONSULTANT shall not be liable for failure to perform, unless the services to be furnished by the subcontractor were obtainable from other sources in sufficient time and within budgeted resources to permit CONSULTANT to meet the required delivery schedule or other performance requirements.

D. Should the Agreement be terminated as provided in Paragraph "A" above, CONSULTANT shall provide EL DORADO TRANSIT with all finished and unfinished documents, data, studies, services, drawings, maps, models, photographs, reports, etc., prepared by CONSULTANT pursuant to this Agreement. Upon termination as provided in Paragraph "A" above, CONSULTANT shall be paid the value of the work performed, as determined by EL DORADO TRANSIT, less payments of compensation previously made. Payments previously made by EL DORADO TRANSIT to CONSULTANT shall be credited to the amount payable to CONSULTANT for allowable costs as provided herein, except, however, CONSULTANT shall be entitled to a proportionate fixed fee, if any, which in the opinion of EL DORADO TRANSIT, it has legitimately earned and was not related to the cause for which this Agreement was terminated.

E. If after notice of termination of this Agreement, as provided for in 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 provisions of this Section, then the rights and obligations of the parties shall be the same as if the Agreement had been terminated for the convenience of EL DORADO TRANSIT.



SECTION 15 - INTEREST OF OFFICIALS AND CONSULTANT

- A. No member of, or delegate to, the Congress of the United States of America nor any Resident Commissioner shall be admitted to any share or part hereof or to any benefits to arise here from.
- B. CONSULTANT hereby covenants that he or she has, at the time of the execution of this Agreement, no interest, and that he or she shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed pursuant to this Agreement. CONSULTANT further covenants that in the performance of this work, no person having any such interest shall be employed.

SECTION 16 - SUBCONTRACTING

- A. CONSULTANT shall not subcontract or otherwise assign any portion of the work to be performed under this Agreement without the prior written approval of EL DORADO TRANSIT.
- B. In no event shall CONSULTANT subcontract for work in excess of the amounts shown in Exhibit "A".
- C. All subcontracts shall be subject to the provisions contained in this contract between EL DORADO TRANSIT and CONSULTANT.

SECTION 17 - SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and shall inure to the benefit of any successors to, or assigns of, the parties. CONSULTANT shall not assign, delegate or transfer the rights and duties under this Agreement or any part thereof without the prior written consent of the other party to this Agreement.

SECTION 18 - INDEPENDENT CONTRACTOR

EL DORADO TRANSIT and CONSULTANT agree that CONSULTANT is an independent contractor. CONSULTANT shall be solely responsible for the conduct and control of the work performed under this Agreement. CONSULTANT shall be free to render consulting services to others during the term of this Agreement, so long as such activities do not interfere with or diminish CONSULTANT'S ability to fulfill the obligations established herein to EL DORADO TRANSIT.

SECTION 19 - EQUAL EMPLOYMENT OPPORTUNITY

In connection with the performance of this Agreement, CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, age, creed, sex, gender expression 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.

## SECTION 20 - DISADVANTAGED BUSINESS ENTERPRISE (DBE)

A. To the extent that Federal funds are used, it is the policy of the U.S. Department of Transportation that minority and women-owned business enterprises (hereby referred to as DBEs), 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 under this Agreement.

B. To the extent applicable, CONSULTANT 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 this Agreement. In this regard, CONSULTANT 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. CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.

C. All subcontracts awarded by CONSULTANT shall contain the provisions included in paragraphs (A) and (B), as described immediately above.

## SECTION 21 - TITLE VI COMPLIANCE

A. CONSULTANT agrees to comply with 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.

B. During the performance of this Agreement the CONSULTANT, for itself, its assignees and successors in interest, agrees as follows:

1. **Compliance with Regulations:** The CONSULTANT shall comply with the Regulations relative to nondiscrimination in federally-assisted programs, Title 49 Code of Federal Regulations, Parts 21, as they may be amended during the period of this contract (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
2. **Nondiscrimination:** The CONSULTANT, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, religion, color, sex, age or national origin in the selection or retention of subcontractors, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. Department of Transportation Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for subcontractors, including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiations made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONSULTANT of the CONSULTANT'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age or national origin.

4. Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by EL DORADO TRANSIT to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a consultant is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to EL DORADO TRANSIT, as appropriate, and shall set forth what efforts it has made to obtain the information.

C. Sanctions for Noncompliance: In the event of the CONSULTANT’S noncompliance with the nondiscrimination provisions of this Agreement, EL DORADO TRANSIT shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the CONSULTANT under the Agreement until the CONSULTANT complies, and/or;
2. Cancellation, termination, or suspension of the Agreement, in whole or in part.

D. Incorporation of Provisions: the CONSULTANT shall include the provisions of Paragraphs A and B (including all subparts) of this Section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subcontract or procurement as EL DORADO TRANSIT may direct as a means of enforcing such provisions including sanctions for noncompliance: provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONSULTANT may request EL DORADO TRANSIT to enter into such litigation to protect the interests of EL DORADO TRANSIT, and in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

E. Civil Rights: All subcontractors awarded by contractors shall contain provisions requiring compliance with Title VI of the Civil Rights Act of 1964, as amended. Accordingly, 49 CFR Part 21, through Appendix C and 23 CFR 710.405(b) shall be made applicable by reference in all subcontracts financed in whole or in part with Federal funds.

## SECTION 22 - PUBLICATION

A. Any and all reports published by CONSULTANT shall acknowledge that it was prepared in cooperation with EL DORADO TRANSIT.

B. Articles, reports, or works reporting on the work provided for herein, or on portions thereof, which are published by CONSULTANT shall contain in the foreword, preface, or footnote the following statement:

“The contents of this report reflect the view of the author who is responsible for the facts and accuracy of the data presented herein. The contents do not necessarily reflect the official views of EL DORADO TRANSIT. This report does not constitute a standard, specification, or regulation.”

C. Articles, reports, or works reporting on the work provided for herein, or on portions thereof, which are published by CONSULTANT shall contain in the inside cover page:

### SECTION 23 - INDEMNIFICATION

To the fullest extent allowed by law, CONSULTANT shall defend, indemnify, and hold the EL DORADO TRANSIT, its officers, agents, and employees, harmless against and from any all claims, suits, losses, damages, and liability for damages, including reasonable attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, EL DORADO TRANSIT employees, and the public, or damage to property, or any economic or consequential losses, to the extent caused by the negligent acts, errors or omissions, recklessness, or willful misconduct, of CONSULTANT or those for whom CONSULTANT is legally liable and which are claimed to or in any way arise out of or are connected with the Work by CONSULTANT, his agents or employees including CONSULTANT's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of EL DORADO TRANSIT, CONSULTANT, subcontractor(s) and employee(s) of CONSULTANT, or any of these, except for the sole, or active negligence of EL DORADO TRANSIT, its officers and employees, and except as expressly prescribed by statute. This duty of CONSULTANT to indemnify and hold EL DORADO TRANSIT harmless includes the duties to defend set forth in California Civil Code Section 2778.

### SECTION 24 – COMPLIANCE HEALTH AND SAFETY REGULATIONS

EL DORADO TRANSIT requires all consultants and vendors to place the highest importance on health and safety for all work performed on behalf of EL DORADO TRANSIT. CONSULTANT shall, at all locations where work is to be performed on behalf of EL DORADO TRANSIT, comply with all applicable federal, state, and local fire, safety and health statutes, ordinances, codes, and regulations, as well as the rules, policies, and orders of any applicable regulatory entity or agency, at CONSULTANT's sole cost and expense. CONSULTANT shall ensure that all of its employees, agents, and representatives are knowledgeable of all safety, fire, and health requirements and regulations applicable to the work performed on behalf of EL DORADO TRANSIT.

### SECTION 25 – INSURANCE

The CONSULTANT shall provide proof of a policy of insurance satisfactory to EL DORADO TRANSIT and documentation evidencing that the CONSULTANT maintains insurance that meets the following requirements.

- A. Full Workers' Compensation and Employer's Liability Insurance covering all employees of CONSULTANT as required by law in the State of California. If CONSULTANT does not have any employees, CONSULTANT is not required to maintain Worker's Compensation Insurance.
- B. Commercial General Liability Insurance of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage

- C. Automobile Liability Insurance of not less than Five Hundred Thousand (\$500,000) is required in the event motor vehicles are used by the CONSULTANT in performance of the Agreement.
- D. Proof of coverage satisfactory to EL DORADO TRANSIT as evidence that the insurance required herein is being maintained shall be provided. The insurance will be issued by an insurance company acceptable to EL DORADO TRANSIT, or be provided through partial or total self-insurance likewise acceptable to EL DORADO TRANSIT.
- E. The certificate of insurance must include the following provisions stating that:
  - 1) The insurance required herein shall provide that no cancellation or material change in any policy shall become effective except upon thirty (30) days prior written notice to EL DORADO TRANSIT; and
  - 2) EL DORADO TRANSIT, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all liability policies except Workers' Compensation, automobile and professional liability insurance policies. Proof that EL DORADO TRANSIT is named additional insured shall be made by providing EL DORADO TRANSIT with a certified copy, or other acceptable evidence, or an endorsement to insurance policy naming EL DORADO TRANSIT as additional insured.
- F. CONSULTANT agrees that the insurance required herein 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, CONSULTANT 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 term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of EL DORADO TRANSIT and CONSULTANT agrees that no work or services shall be performed prior to such approval. In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, EL DORADO TRANSIT may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- G. Certificate of insurance shall meet such additional standards as may be determined by EL DORADO TRANSIT as essential for protection of EL DORADO TRANSIT.
- H. CONSULTANT shall not commence performance of this Agreement unless and until compliance with each and every requirement of the insurance policy is achieved.

- I. Failure of CONSULTANT to maintain the insurance required herein, or to comply with any of the requirements of the insurance provisions, shall constitute a material breach of the entire Agreement.
- J. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to EL DORADO TRANSIT, its officers, officials, employees, or volunteers.
- K. The CONSULTANT's insurance coverage shall be primary insurance as respects EL DORADO TRANSIT, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by EL DORADO TRANSIT, its officers, officials, employees, or volunteers shall be in excess of the CONSULTANT's insurance and shall not contribute with it.
- L. The insurance companies shall have no recourse against EL DORADO TRANSIT, its officers, agents, employees, or any of them for payment of any premiums or assessments under any policy issued by an insurance company.
- M. CONSULTANT's indemnity and other obligations shall not be limited by the insurance required herein and shall survive the expiration of this Agreement.
- N. 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 as respects EL DORADO TRANSIT, its officers, employees, and volunteers, or CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- O. In the event CONSULTANT cannot provide an occurrence policy, CONSULTANT shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.

## SECTION 26 - OWNERSHIP OF DOCUMENTS

Original documents, methodological explanations, computer programs, computer files, drawings, designs and reports generated by this Agreement shall belong to and become the property of EL DORADO TRANSIT in accordance with accepted standards relating to public work contracts. Any additional copies, not otherwise provided for herein, shall be the responsibility of EL DORADO TRANSIT. Software used but not created in the performance of this agreement is not included. CONSULTANT shall not be held responsible for modification, re-use, or misuse of these various documents and other instruments of professional service.

SECTION 27 - DOCUMENTATION/ACCESS TO RECORDS

CONSULTANT shall document the results of the work to the satisfaction of EL DORADO TRANSIT. Such documentation may include preparation of progress and final reports, plans, specifications, and estimates, or similar evidence of attainment of contract objectives.

CONSULTANT and its subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred, and makes such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment to CONSULTANT. Such materials shall be available for inspection by authorized representatives of EL DORADO TRANSIT, or the copies thereof shall be furnished if requested. The U.S. Department of Transportation, Caltrans, the Comptroller General of the United States, or any authorized representatives of these agencies, shall have access to any books, documents, papers, and records of the CONSULTANT which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and/or transcriptions.

SECTION 28 - NOTICES

Any notices required to be given pursuant to this Agreement shall be deemed to have been given by their deposit, postage prepaid, in the United States Postal Service, addressed to the parties as follows:

- A. To EL DORADO TRANSIT:      Brian James, Executive Director  
El Dorado County Transit Authority  
6565 Commerce Way  
Diamond Springs, CA 95619
  
- B. To CONSULTANT:              Joel Johnstone  
Sub Zero HVAC Services  
2507 Elkhorn Blvd.  
Rio Linda, CA 95673  
916-521-2402

Nothing hereinabove shall prevent either EL DORADO TRANSIT or CONSULTANT from personally delivering any such notices to the other.

SECTION 29 - JURISDICTION

Except as otherwise specifically provided, this Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in that State. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of the Agreement shall be in full force and effect.

SECTION 30 - INTEGRATION

This Agreement represents the entire understanding of EL DORADO TRANSIT and CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by EL DORADO TRANSIT and CONSULTANT.

SECTION 31 – CONFIDENTIALITY

CONSULTANT hereto agrees to keep confidential and not to disclose, directly or indirectly, any information regarding the EL DORADO TRANSIT’s business, including without limitation, information with respect to operations, procedures, methods, accounting, technical data, or existing or potential customers, or any other information which EL DORADO TRANSIT has designated as confidential.

CONSULTANT agrees that CONSULTANT, its employees, agents and representatives shall not, either during the term of this Agreement or at any time thereafter, disclose any proprietary, secret or confidential information of EL DORADO TRANSIT to any third party whatsoever without express written consent of EL DORADO TRANSIT.

CONSULTANT shall secure all documents, work in process, products or other items incorporating any EL DORADO TRANSIT’s information in a manner that will prevent its unauthorized disclosure.

CONSULTANT recognizes that EL DORADO TRANSIT may be required to produce records in accordance with the California Public Records Act (Cal. Govt. Code § 6250 et seq.) and agrees to cooperate with EL DORADO TRANSIT in satisfaction of EL DORADO TRANSIT’s obligations thereunder.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement the day and year first above written.

EL DORADO TRANSIT:

CONSULTANT:

By \_\_\_\_\_  
Brian James, Executive Director

By \_\_\_\_\_  
Joel Johnstone, Owner

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael Tucker  
Attorney for El Dorado County Transit Authority



**EXHIBIT "A"**  
**PROPOSAL OF CONSULTANT CONTAINING**  
**SCOPE OF WORK**

