

AGREEMENT FOR PROFESSIONAL SERVICES

RFP No. 2014-MA-01

THIS AGREEMENT is made as of the _____ day of _____, 2014, by and between CENTRAL CONTRA COSTA TRANSIT AUTHORITY (County Connection) and _____, (“CONTRACTOR”).

WHEREAS, COUNTY CONNECTION desires to obtain professional services in connection with Bus Advertising Services and has issued a Request for Proposals dated _____, 2014, a copy of which is attached and incorporated as Exhibit A; and

WHEREAS, the CONTRACTOR desires to furnish such services and submitted a written proposal dated _____, 2014 a copy of which is attached and incorporated as Exhibit B.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. RENDITION OF SERVICES

The CONTRACTOR agrees to provide professional services to County Connection in accordance with the terms and conditions of this Agreement.

2. SCOPE OF SERVICES

The scope of the CONTRACTOR’s services shall consist of the services set forth in Exhibit A, as supplemented by Exhibit B, except when inconsistent with Exhibit A.

3. TERM

CONTRACTOR shall perform the services under this Agreement for a three-year term with two one-year option terms, commencing upon the effective date specified in a written Notice to Proceed from County Connection, unless the Agreement is terminated sooner pursuant to Section 17. In the event that County Connection desires to exercise its option(s) to extend the agreement, it will provide ninety (90) day’s notice to the Contractor prior to the end of the expiration of the base of option term.

4. OWNERSHIP OF WORK

All reports, designs, drawings, plans, specifications, analyses, charts, tables, schedules and all other materials prepared, or in the process of being prepared, for the services to be performed by CONTRACTOR shall be and are the property of County Connection. County Connection shall be entitled to access and to copies of these materials during the progress of the work. Any such materials remaining in the hands of the CONTRACTOR or in the hands of any subcontractor upon completion or termination of the work shall be immediately delivered to County Connection. If any materials are lost, damaged or destroyed before final delivery to County Connection, the CONTRACTOR shall replace them at its own expense and the CONTRACTOR assumes all risks of loss, damage or destruction of or to such materials. The CONTRACTOR may retain a copy of all material produced under this Agreement for its use in its general business activities. Notwithstanding the foregoing, County Connection is not claiming an ownership interest in the pre-owned intellectual property rights of third part advertisers.

5. CONFIDENTIALITY

Any County Connection materials to which the CONTRACTOR has access or materials prepared by the CONTRACTOR during the course of this Agreement ("confidential information") shall be held in confidence by the CONTRACTOR, who shall exercise all reasonable precautions to prevent the disclosure of confidential information to anyone except the officers, employees and agents of the CONTRACTOR as necessary to accomplish the rendition of services set forth in Section 2 of this Agreement.

CONTRACTOR shall not release any reports, information or promotional materials prepared in connection with this Agreement, whether deemed confidential or not, to any third party without the approval of County Connection's General Manager.

6. KEY PERSONNEL

It is understood and agreed by the parties that at all times during the term of this Agreement that _____ shall serve as the primary staff person of CONTRACTOR to undertake, render and oversee all of the services under this Agreement

7. USE OF SUBCONTRACTORS

CONTRACTOR shall not subcontract any services to be performed by it under this Agreement without the prior written approval of County Connection, except for service firms engaged in drawing, reproduction, typing, and printing. CONTRACTOR shall be solely responsible for reimbursing any subcontractors and County Connection shall have no obligation to them.

8. CHANGES

County Connection may, at any time, by written order, make changes within the scope of work and services described in this Agreement. If such changes cause an increase in the budgeted cost of or the time required for performance of the agreed upon work, an equitable adjustment as mutually agreed shall be made in the limit on compensation as set forth in Section 11 and as discussed in Exhibit A. In the event that CONTRACTOR encounters any unanticipated conditions or contingencies that may affect the scope of work or services, schedule, or the amount of compensation specified herein, CONTRACTOR shall so advise County Connection immediately upon notice of such condition or contingency. The written notice shall explain the circumstances giving rise to the unforeseen condition or contingency and shall set forth the proposed adjustment in schedule or compensation. This notice shall be given to County Connection prior to the time that CONTRACTOR performs work or services related to any proposed adjustment. The pertinent changes shall be expressed in a written supplement to this Agreement prior to implementation of such changes.

9. RESPONSIBILITY; INDEMNIFICATION

CONTRACTOR represents and warrants that it has the rights to use any content or materials (including, without limitation, text, logos, names, marks, photos, drawings, images, and likenesses) that it incorporates in its advertising materials under this Agreement. CONTRACTOR agrees to indemnify, defend, and hold harmless County Connection and its directors, officers, attorneys, employees and agents from any and all third party suits, claims or actions arising out of any injury to persons or property that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by the CONTRACTOR or its employees, subcontractors or agents, including without limitation, actions based on false advertising, copyright, trademark, defamation, right to privacy, and right to publicity, based upon the nature or content of any advertising material provided under this Agreement. CONTRACTOR shall, at its own expense, defend any and all such actions and shall, at its own

expense, pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith, and if any judgment shall be rendered against County Connection in any such action, CONTRACTOR shall, at its own expense, satisfy and discharge the same. This indemnification shall survive termination or expiration of the Agreement.

10.INSURANCE

A. Types of Insurance

1. Workers' Compensation

If CONTRACTOR employs any person to perform work in connection with this Agreement, CONTRACTOR shall procure and maintain at all times during the performance of such work Workers' Compensation Insurance in conformance with the laws of the State of California and Federal laws where applicable. Employers' Liability Insurance shall not be less than Two Million Dollars (\$2,000,000) per accident or disease. Prior to commencement of work under this Agreement by any such employee, CONTRACTOR shall deliver to County Connection a Certificate of Insurance that shall stipulate that 30 days' advance written notice of cancellation, non-renewal or reduction in limits shall be given to County Connection.

The policy shall contain a waiver of subrogation in favor of the Central Contra Costa Transit Authority and its officers, directors, employees, volunteers, and agents, while acting in such capacity, and their successors and assignees, as they now or as they may hereafter be constituted, singly, jointly, or severally.

2. Commercial General and Automobile Liability Insurance

a. Commercial General Liability Insurance

CONTRACTOR shall, at its own cost and expense, also procure and maintain Commercial General Liability insurance providing bodily injury and property damage coverage with a combined single limit of at least \$2 million each occurrence or claim and a general aggregate limit of at least \$2 million. This insurance shall include but not be limited to premises and operations; contractual liability covering the indemnity provisions contained in this Agreement; personal injury; products and completed operations, advertising injury liability, and broad form property damage.

b. Automobile Liability

CONTRACTOR shall, at its own cost and expense, procure and maintain Automobile Liability insurance providing bodily injury and property damage with a combined single limit of at least \$2 million per occurrence for all owned, non-owned and hired automobiles. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.

c. Certificate of Insurance

Prior to commencing work or entering onto the property, CONTRACTOR shall file a Certificate of Insurance with County Connection evidencing the foregoing coverages, including the following endorsements:

- i. The insurance company(ies) issuing such policy(ies) shall give written notice to County Connection of any material alteration, or reduction in aggregate limits, if such limits apply, and provide at least thirty (30) days' notice of cancellation.
 - ii. That the policy(ies) is Primary Insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim which CONTRACTOR is liable for under this Section, up to and including the total limit of liability, without right of contribution from any other insurance effected or which may be effected by County Connection.
 - iii. Such insurance shall include as additional insured the Central Contra Costa Transit Authority and its respective directors, officers, employees and agents while acting in such capacity, and their successors or assignees, as they now or as they may hereafter be constituted, singly, jointly or severally. Inclusion of County Connection as additional named insured shall not in any way affect its rights either as respects any claim, demand, suit or judgment made, brought or recovered against the CONTRACTOR. Said policy shall protect CONTRACTOR and County Connection in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.
3. Professional Liability Insurance
CONTRACTOR shall also maintain Professional Liability Insurance covering CONTRACTOR's performance under this Agreement with a limit of liability of One Million Dollars (\$1,000,000) for any one claim. This insurance shall be applicable to claims arising from the work performed under this Agreement. Prior to commencing work under this Agreement, CONTRACTOR shall furnish to County Connection a Certificate of Insurance or certified copy of the insurance policy if requested, indicating compliance with the requirements of this paragraph. This certificate or policy shall further stipulate that thirty (30) days advance written notice of cancellation, non-renewal or reduction in limits shall be given to County Connection.

B. General Conditions

1. Acceptable Insurance

All policies will be issued by insurers acceptable to County Connection. This insurance shall be issued by an insurance company or companies authorized to do business in the State of California with minimum "Best's" rating of B+ and with minimum policyholder surplus of \$25,000,000. All policies shall be issued in a form satisfactory to the General Manager of County Connection and shall be issued specifically as primary insurance.

2. Claims-Made Insurance

If any insurance specified above shall be provided on a claims-made basis, then in addition to coverage requirements above, such policy shall provide that:

- a. Policy retroactive date coincides with or precedes the CONTRACTOR's start of work (including subsequent policies purchased as renewals or replacements).
- b. CONTRACTOR will make every effort to maintain similar insurance for at least three years following project completion, including the requirement of adding all additional insureds.
- c. If insurance is terminated for any reason, CONTRACTOR agrees to purchase an extended reporting provision of at least two years to report claims arising from work performed in connection with this Agreement.
- d. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

3. Failure to Procure or Maintain Insurance

The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of the agreement.

4. Terms of Policies

All insurance specified above shall remain in force until all work to be performed is satisfactorily completed. If the insurance is provided on a claims-made basis, it shall remain in force in accordance with section 10.B.2 above.

5. Evidence of Insurance

County Connection reserves the right to request a certified duplicate original of all policies required under this section.

11.COMPENSATION TO COUNTY CONNECTION

CONTRACTOR shall compensate County Connection in accordance with the compensation structure set forth in Exhibit A and Exhibit B.

12.MANNER OF PAYMENT

CONTRACTOR shall submit payments to County Connection on a monthly basis on or before the 20th of the month for gross revenues that have been billed during the preceding month. Payments shall be based on the compensation structure set for in Exhibit A and Exhibit B.

Said monthly payments shall be accompanied by a schedule which shows the advertisements that were displayed and the gross revenue earned for the advertisement.

13.NON DISCRIMINATION

CONTRACTOR (and any subcontractors) shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. CONTRACTOR (and any subcontractors) shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by CONTRACTOR (and any subcontractors) to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as County Connection deems appropriate.

14.EQUAL EMPLOYMENT OPPORTUNITY

In connection with the performance of this Agreement, CONTRACTOR shall not discriminate against any employee or applicant for employment, because of race, religion, color, sex, disability or national origin. CONTRACTOR shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, disability or national origin. Such actions 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. CONTRACTOR further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

15.CONTRACTOR'S STATUS

Neither the CONTRACTOR nor any party contracting with the CONTRACTOR shall be deemed to be an agent or employee of County Connection. The CONTRACTOR is and shall be an independent contractor, and the legal relationship of any person performing services for the CONTRACTOR shall be one solely between that person and the CONTRACTOR.

16.ASSIGNMENT

CONTRACTOR shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of County Connection.

17.COUNTY CONNECTION WARRANTIES

County Connection makes no warranties, representations or agreements, either express or implied, beyond such as are explicitly stated in this Agreement.

18.COUNTY CONNECTION REPRESENTATIVE

Except when approval or other action is required to be given or taken by the County Connection Board of Directors the General Manager of County Connection, or such person or persons as he shall designate in writing from time to time, shall represent and act for County Connection.

19.TERMINATION

A. For Cause

In addition to any other termination rights contained in this Agreement, County Connection shall have the right, upon written notice to CONTRACTOR, to terminate this Agreement any time after the occurrence of any one or more of the following events:

1. CONTRACTOR fails to pay County Connection the annual fee as required by Section 9 of the Agreement, when such nonpayment continues for a ten (10) day period after County Connection sends a written notice of such nonpayment to the CONTRACTOR.
2. CONTRACTOR fails to comply with any covenant or condition of this Agreement, and fails to correct such default within ten (10) days after County Connection sends a written notice of default to the CONTRACTOR.
3. CONTRACTOR becomes insolvent or enters any bankruptcy or insolvency proceedings during the term of this Agreement, all monies accruing to County Connection under the terms of the Agreement for the entire unexpired term of this Agreement shall be accelerated and become immediately due and owing County Connection from CONTRACTOR.

4. CONTRACTOR abandons or discontinues operations hereunder.
5. CONTRACTOR becomes permanently deprived of the rights, powers and privileges necessary for the proper conduct and operations of the bus advertising program specified in this Agreement.

B. For Convenience

County Connection shall have the right to terminate this Agreement at any time and for any reason by giving thirty (30) days written notice to the CONTRACTOR.

C. After Termination for Cause or Convenience

Upon receipt of a termination notice, the CONTRACTOR shall not commit itself to any additional, new or extended advertising accounts and if County Connection does not elect to take over the advertising accounts as described below, CONTRACTOR shall terminate its advertising contracts for displays on County Connection buses.

CONTRACTOR shall pay County Connection a pro rata share of the annual fee up to the effective date of termination.

Upon termination the CONTRACTOR shall restore County Connections's buses to their condition prior to the installation of any advertising material, ordinary wear and tear excepted. CONTRACTOR will restore the buses to their original condition within fourteen (14) calendar days of the issuance of the termination notice or as otherwise specified in the termination notice. If CONTRACTOR fails to restore County Connection buses to their condition prior to the installation of any advertising material within the required timeframe, County Connection may, without notice to the CONTRACTOR, restore the buses. The CONTRACTOR shall be liable for County Connection's costs of removal of all advertising material and restoration of the buses to their original condition. County Connection shall have no duty to mitigate the CONTRACTOR's costs or damages.

In the alternative, County Connection may elect, and so advise the CONTRACTOR in the notice of termination of the Agreement, that County Connection will take over and maintain the advertising accounts in effect under this Agreement. In such a case the CONTRACTOR will provide, on or before termination date, copies of all advertising contracts in effect at the time of termination and for the preceding twelve (12) month period and agrees to assign same to County Connection. County Connection shall have the right to reject or accept, and turn over to CONTRACTOR's successor if any, the assignment of any contract CONTRACTOR may have with various advertisers for advertising on County Connection vehicles.

If County Connection terminates the contract for convenience, the CONTRACTOR shall be entitled to 50% of the net advertising revenues generated from contracts so assigned by CONTRACTOR for a period of up to six (6) months. If County Connection terminates the contract for cause, the CONTRACTOR shall not be entitled to any of the revenues generated from any assigned contracts.

CONTRACTOR further agrees to cooperate fully with County Connection in the orderly transfer of business to CONTRACTOR's successor.

County Connection shall not in any manner be liable for the CONTRACTOR's actual or projected lost profits had the CONTRACTOR completed the services required by this Agreement.

20.WAIVER

The waiver by any party of a breach of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach, either of the same or different provisions of this Agreement.

21.NOTICES

All communications relating to the day-to-day activities of the project shall be exchanged between County Connection's General Manager or designee and the CONTRACTOR's representative.

All other notices and communications regarding interpretation of the terms of this contract and changes thereto shall be given to the other party in writing and may be given by personal delivery to a representative of the parties or by mailing the same postage prepaid, addressed as follows:

If to COUNTY CONNECTION: Central Contra Costa Transit Authority
Attn: General Manager
2477 Arnold Industrial Way
Concord, CA 94520-5327

If to the CONTRACTOR: _____
Attn: _____

The address to which mailings may be made may be changed from time to time by notice mailed as described above. Any notice given by mail shall be deemed given on the day after that on which it is deposited in the United States Mail as provided above.

22.ATTORNEYS' FEES

If any legal proceeding should be instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in said proceeding shall recover, in addition to all court costs, reasonable attorneys' fees.

23.APPLICABLE LAW

This Agreement, its interpretation and all work performed under it shall be governed by the laws of the State of California.

24.BINDING ON SUCCESSORS

All of the terms, provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers as of the day and year first above written.

COUNTY CONNECTION:

CONTRACTOR:

CENTRAL CONTRA COSTA TRANSIT
AUTHORITY

By: _____

By: _____

Title: General Manager

Title: _____

ATTEST:

By: _____

*By: _____

Secretary for County Connection

APPROVED AS TO FORM:

Title: _____

By: _____

Attorney for County Connection

** If the CONTRACTOR is a Corporation, two officers of the corporations consisting of one from each of the following categories must sign the agreement: 1) the President, Vice President or Board Chair and 2) the Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer. If only one officer signs or an individual not specified above, the CONTRACTOR will submit satisfactory evidence that the individual is authorized to sign for and bind the corporation*