

**EXHIBIT B**

**SAMPLE AGREEMENT**

# AGREEMENT FOR PROFESSIONAL SERVICES

## RFP No. 2024-MA-01

THIS AGREEMENT is made as of the \_\_\_\_ day of \_\_\_\_\_, 2024/2025 (Effective Date), by and between the 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 \_\_\_\_\_, 2024, 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 \_\_\_\_\_, 2024 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. In the performance of its services, CONTRACTOR represents that it has and will exercise that degree of professional care, skill, efficiency and judgment ordinarily employed by contractors with special expertise in providing similar services. CONTRACTOR further represents and warrants that it holds all applicable licenses, registrations, and certifications in current and good standing that may be required under applicable law or regulations to perform these services and agrees to retain such licenses, registrations, and certifications in active status throughout the duration of this engagement.

### 2. SCOPE OF SERVICES AND AGREEMENT DOCUMENTS

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.

This Agreement consists of the following documents:

- (1) This Agreement;
- (2) Exhibit A, Request for Proposals dated \_\_\_\_\_, 2024;
- (3) Exhibit B, CONTRACTOR's Proposal dated \_\_\_\_\_, 2024;
- (4) [ADDITIONAL EXHIBITS AS NEEDED].

In the event of conflict between or among the terms of the Agreement documents, the order of precedence will be the order of documents listed above, with the first-listed document having the highest precedence and the last-listed document having the lowest precedence.

### 3. TERM

The term of this Agreement will be for a three-year term, commencing upon the effective date specified in the written Notice to Proceed from County Connection. County Connection reserves the right, in its sole discretion, to exercise up to two one-year option terms to extend the Agreement, pursuant to the terms of this Agreement. In the event that County Connection desires to exercise its option(s) to extend the Agreement, it will provide ninety (90) days' notice to the Contractor prior to the expiration of the current term.

It is understood that the term of the Agreement and any exercised option term(s) are subject to County Connection's right to terminate the Agreement in accordance with Section 19 of this Agreement.

#### **4. OWNERSHIP OF WORK**

All reports, designs, drawings, plans, specifications, analyses, charts, tables, schedules, photographic images, video, sound recordings, 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 or any right to the intellectual property of third parties who advertise on County Connection's buses in connection with this Agreement.

The CONTRACTOR represents and warrants that all materials prepared under this Agreement are original or developed from materials in the public domain (or both) and that all materials prepared under and services provided under this Agreement do not infringe or violate any copyright, trademark, patent, trade secret, or other intellectual property or proprietary right of any third party. CONTRACTOR shall be responsible for obtaining requisite licenses (and support agreements) and paying all royalties and other fees relating to any third-party intellectual property rights embodied in the materials and necessary or required for the services under this Agreement.

Any and all right, title, and interest (including, without limitation, patent rights, copyright and any other intellectual property or proprietary right) to materials produced by County Connection or jointly produced by County Connection and CONTRACTOR are retained by County Connection.

#### **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, its employees, subcontractors, subconsultants, and agents, 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. Upon written notice by the

CONTRACTOR and approval by County Connection, which will not be unreasonably withheld, the CONTRACTOR may substitute this person with another person, who will possess similar qualifications and experience for this position.

## **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 Exhibit B or in the time of required performance as set forth in Section 3, or both. 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.

County Connection will not be liable or responsible for the maintenance and/or safety of CONTRACTOR's equipment or supplies placed upon County Connection's property in accordance with this Agreement. CONTRACTOR acknowledges that it assumes full responsibility for any loss or damage to its equipment and supplies.

To the fullest extent allowed by law, CONTRACTOR agrees to indemnify, defend, and hold harmless County Connection and its members, directors, officers, attorneys, employees and agents from any and all third party suits, claims or actions arising out of any of the following:

- A. 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 caused by a negligent act or omission or willful misconduct of the CONTRACTOR or its employees, subcontractors or agents; or
- B. Any allegation that materials or services provided by the CONTRACTOR under this agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual property or proprietary right of any third party; or
- C. Any allegation based on false advertising, defamation, right to privacy, and right to

publicity, based upon the nature or content of any advertising materials or services provided under this Agreement.

CONTRACTOR further agrees to defend, at its own expense, any and all such actions, suits or claims and pay all charges of attorneys and all costs and other expenses of defense as they are incurred. If any judgement is rendered against County Connection, or any of the other individuals enumerated above in any such action, the CONTRACTOR will, 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 when 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, procure and maintain at all times during the performance of this Agreement Commercial General Liability insurance covering CONTRACTOR and County Connection for liability arising out of the operations and activities of CONTRACTOR and any subcontractors 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 during the entire term of this Agreement Automobile Liability insurance covering all vehicles, licensed or unlicensed, on or off County Connection's premises, used by or on behalf of CONTRACTOR in the performance of work under this Agreement 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. Additional Insureds.

The Commercial General Liability Insurance and Automobile Liability Insurance policies will name, as additional insureds, in connection with CONTRACTOR's activities, County Connection, and its directors, officers, employees and agents. The insurer(s) shall agree that its policy(ies) is Primary Insurance and that it shall be liable for the full amount of any loss up to and including the total limit of liability without right of contribution from any other insurance covering County Connection.

Inclusion of County Connection as an additional insured shall not in any way affect its rights as respects to any claim, demand, suit or judgment made, brought or recovered against CONTRACTOR. The 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 insurer's liability as set forth in the policy beyond the amount or amounts shown or to which the insurer would have been liable if only one interest had been named as an insured. Such insurance shall also contain a waiver of subrogation in favor of County Connection and its directors, officers, agents and employees while acting in such capacity, and their successors and assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

d. Certificate of Insurance

Prior to commencement of work hereunder, CONTRACTOR shall deliver to County Connection a Certificate of Insurance which shall indicate compliance with the insurance requirements and shall stipulate that thirty (30) days' advance written notice of cancellation, non-renewal or reduction in limits shall be given to County Connection.

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. Deductibles and Retentions

CONTRACTOR shall be responsible for payment of any deductible or retention on CONTRACTOR’s policies without right of contribution from County Connection. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the named insured is unacceptable.

In the event that the policy of the CONTRACTOR or any subcontractor contains a deductible or self-insured retention, and in the event that County Connection seeks coverage under such policy as an additional insured, CONTRACTOR shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy for a lawsuit arising from or connected with any alleged act or omission of CONTRACTOR, subcontractor, or any of their officers, directors, employees, agents, or suppliers, even if CONTRACTOR or subcontractor is not a named defendant in the lawsuit.

4. 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.

5. 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.

6. 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**

During the term of the Agreement, and any exercised option term(s), CONTRACTOR shall compensate County Connection for Option [A/B], in accordance with the table below and Exhibits A and B.

The monthly payment to County Connection will be either one-twelfth of the Fixed Annual Guarantee or the Revenue Share of that month's gross advertising revenue plus a minimum monthly guarantee amount, whichever is greater.

Gross advertising revenue is all monies, remunerations, and considerations of every kind billed to and received from advertisers for the sale of advertising space by the CONTRACTOR in its operations as permitted under the Agreement plus the revenue equivalent from all advertising (which may not have been sold) appearing on the bus advertising space provided by County Connection.

Net advertising revenue means "gross advertising revenue" less the following: (a) Deductions from gross sales of commissions paid to advertising agencies or sales representatives other than CONTRACTOR staff, if any, at a rate not exceeding fifteen percent (15%) of gross billings; and (b) The amount of any sales, use, gross receipts, occupational and similar taxes (but excluding income and property taxes) directly imposed by any public agency on the sale or display of advertising under the terms of the Agreement and paid by the CONTRACTOR.

**OPTION A – ONLY ADVERTISING FORMATS PLACED BELOW SIDE WINDOWS**

Or

**OPTION B - ALLOWS FULL WRAP COVERAGE ON UP TO 20% OF FLEET, EXCLUDING HEADLINER PANEL ABOVE THE SIDE WINDOWS**

Contract Year	Fixed Annual Guarantee	Percentage of Gross Revenue Plus Minimum Monthly Guarantee	
		%	\$
Base Year One	\$	%	\$
Base Year Two	\$	%	\$
Base Year Three	\$	%	\$
Option Year One	\$	%	\$
Option Year Two	\$	%	\$

**12.MANNER OF PAYMENT**

CONTRACTOR shall submit payments to County Connection on a monthly basis on or before the 20th of each month of the contract term. Any payment not made within ten (10) days of the due date may be subject to a 5% late fee.



If compensation is based on the Fixed Annual Guarantee, the monthly payment shall be one-twelfth (1/12th) of the total annual compensation. If compensation is based on the Revenue Share plus a minimum monthly guarantee, the monthly payment shall be accompanied by a schedule that shows the advertisements that were displayed during that month and the gross revenue earned for each advertisement.

At the conclusion of each contract year, the Contractor shall provide an annual reconciliation to determine the extent that the Revenue Share exceeds the Fixed Annual Guarantee for that contract year (if any).

### **13. NON-DISCRIMINATION ASSURANCE**

The CONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The CONTRACTOR shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of U.S. DOT-assisted contracts. Further, the CONTRACTOR agrees to comply with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. The CONTRACTOR shall obtain the same assurances from its joint venture partners, subcontractors, and subconsultants by including this assurance in all subcontracts entered into under this Agreement. Failure by the CONTRACTOR 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, the CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, citizenship, political activity or affiliation, national origin, ancestry, physical or mental disability, marital status, age, medical condition (as defined under California law), veteran status, sexual orientation, gender identity, gender expression, sex or gender (which includes pregnancy, childbirth, breastfeeding, or related medical conditions), taking or requesting statutorily protected leave, or any other characteristics protected under federal, state, or local laws. The 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, national origin, or any other characteristic protected under state, federal, or local laws. 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. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause. The CONTRACTOR further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

The CONTRACTOR will, in all solicitations or advancements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

The CONTRACTOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about,

discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the CONTRACTOR's legal duty to furnish information.

The CONTRACTOR will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by County Connection, advising the labor union or workers' representative of the CONTRACTOR's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The CONTRACTOR will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor. The CONTRACTOR will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by County Connection and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of the CONTRACTOR's noncompliance with the non-discrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

The CONTRACTOR will include the provisions of this section in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

## **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; CONTRACTOR'S OBLIGATIONS UPON CONTRACT TERMINATION AND EXPIRATION**

### **A. Termination For Cause**

County Connection may, upon written notice to CONTRACTOR, terminate this Agreement for default if CONTRACTOR fails to perform any of the provisions of this Agreement, including:

1. CONTRACTOR fails to pay County Connection in accordance with Sections 11 and 12 of the Agreement, and such nonpayment continues for more than ten (10) days after the payment due date.
2. CONTRACTOR fails to comply with any covenant or condition of this Agreement, and fails to cure such default within ten (10) days after County Connection sends a written notice of default to the CONTRACTOR. If the nature of the breach is such that it will reasonably require more than ten (10) days to commence curing, as determined in County Connection's discretion, CONTRACTOR must provide a plan to cure such breach that is acceptable to County Connection within ten (10) calendar days of the notice of default.
3. CONTRACTOR becomes insolvent or enters any bankruptcy or insolvency proceedings during the term of this Agreement. In this event, 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 to County Connection from CONTRACTOR. In the event of the filing of a petition for bankruptcy by or against the CONTRACTOR or for appointment of a receiver for CONTRACTOR's property, County Connection may terminate this Agreement immediately without a cure period.
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.

If the CONTRACTOR cures the default within the cure period but subsequently defaults again, County Connection may immediately terminate the Agreement without further notice or right to cure.

**B. Termination For Convenience**

County Connection may 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 Fixed Annual Guarantee up to the effective date of termination.

Upon termination, the CONTRACTOR shall restore County Connection'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 the 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. Failure to so cooperate is a breach of the Agreement and grounds for the termination for convenience to be treated as a termination for default.

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.

**D. After Contract Expiration; Transition to a New Vendor**

The CONTRACTOR may sell advertising campaigns that extend for a period of up to six (6) months beyond the Agreement expiration date.

In the event that the services are transitioned to a new vendor or County Connection due to expiration of this Agreement or assignment of the Agreement by County Connection, the CONTRACTOR agrees (with County Connection’s consent) to assign the CONTRACTOR's advertising accounts to the new provider of the services. The CONTRACTOR shall work in good faith with the new vendor to assign and transfer all existing advertising contracts to either the new vendor or County Connection, at County Connection's discretion.

County Connection agrees that the new provider of services (whether a new vendor or County Connection) will assume all responsibility for billing and services of any transferred advertising contracts. For all advertising contracts assigned by CONTRACTOR, the new provider of the services will provide the CONTRACTOR a one-time commission payment equal to 50% of the assigned portion of the contract revenue, which shall be paid no more than 30 days from the conclusion of the Agreement term. This provision shall survive expiration or termination of the Agreement.

The rights and remedies of County Connection provided in this Section 19 are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

**20.WAIVER**

Any waiver of any breach or covenant of this Agreement must be in a writing executed by a duly authorized representative of the party waiving the breach. A waiver by any of the parties of a breach or covenant of this Agreement shall not be construed to be a waiver of any succeeding breach or any other covenant unless specifically and explicitly stated in such waiver.

**21.NOTICES**

All communications relating to the day-to-day activities of the project shall be exchanged between County Connection’s Manager of Marketing & Communications or designee and the CONTRACTOR’s representative, \_\_\_\_\_.

All other notices and communications deemed by either party to be necessary or desirable to be given to the other party shall be 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. MAINTENANCE, AUDIT, AND INSPECTION OF RECORDS**

All CONTRACTOR and subcontractor/subconsultant costs incurred in the performance of this Agreement will be subject to audit. The CONTRACTOR and its subcontractors/subconsultants will permit County Connection, the State Comptroller, and their authorized representatives, to inspect, examine, take excerpts from, transcribe, and copy the CONTRACTOR's books, work, documents, papers, materials, payrolls records, accounts, and any and all data relevant to the Agreement at any reasonable time, and to audit and verify statements, invoices or bills submitted by the CONTRACTOR pursuant to this Agreement. The CONTRACTOR will also provide such assistance as may be required in the course of such audit. The CONTRACTOR will retain these records and make them available for inspection hereunder for a period of three (3) years after expiration or termination of the Agreement.

If, as a result of the audit, it is determined by County Connection's auditor or staff that reimbursement of any costs including profit or fee under this Agreement was in excess of that represented and relied upon during negotiations or represented as a basis for payment, the CONSULTANT agrees to reimburse County Connection for those costs within sixty (60) days of written notification by County Connection.

## **23. CONFLICT OF INTEREST**

Depending on the nature of the work performed, a CONTRACTOR of County Connection may be subject to the same conflict of interest prohibitions established by California law that govern County Connection's employees and officials (Cal. Govt. Code Section 1090 et seq. and Cal. Govt. Code Section 87100 et seq.). During the term of the Agreement, CONSULTANT and its employees may be required to disclose financial interests.

The CONTRACTOR warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under California Government Code §1090 et seq. or §87100 et seq. during the performance of services under this Agreement. The CONTRACTOR further covenants that it will not knowingly employ any person having such an interest in the performance of this Agreement. Violation of this provision may result in this Agreement being deemed void and unenforceable.

Depending on the nature of the work performed, CONTRACTOR may be required to publicly disclose financial interests under the County Connection's Conflict of Interest Code. Upon receipt, the CONSULTANT agrees to promptly submit a Statement of Economic Interests on the form provided by County Connection.

No person previously in the position of Director, Officer, employee or agent of County Connection during his or her tenure or for one (1) year after that tenure will have any interest, direct or indirect, in this Agreement or the proceeds under this Agreement, nor may any such person act as an agent or attorney for, or otherwise represent the CONTRACTOR by making any formal or informal appearance, or any oral or written communication, before County Connection, or any Officer or employee of County Connection, for a period of one (1) year after leaving office or employment with County Connection if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, award or revocation of a permit, license, grant, or contract.

## **24.DISPUTE RESOLUTION**

County Connection and CONTRACTOR agree to attempt in good faith to resolve all disputes informally. If agreed to by both parties, alternate methods of dispute resolution, such as mediation, may be utilized. Unless otherwise directed by County Connection, the CONTRACTOR shall continue performance under this Agreement while matters in dispute are being resolved.

## **25.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.

## **26.APPLICABLE LAW**

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

## **27.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.

## **28.SEVERABILITY**

Should any provision herein be found or deemed to be invalid or unenforceable, this Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect.

## **29.NO THIRD PARTY BENEFICIARIES**

This Agreement is not for the benefit of any person or entity other than the parties.

## **30.ENTIRE AGREEMENT; MODIFICATION**

This Agreement, including any attachments or exhibits, constitutes the entire Agreement between the parties with respect to the subject matter hereof, and supersedes any prior understanding or agreement, oral or written, with respect to such subject matter. It may not be amended or modified, except by a written amendment executed by authorized representatives by both parties. In no event will the Agreement be amended or modified by oral understandings reached by the parties or by the conduct of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers as of the Effective Date.

COUNTY CONNECTION:

CONTRACTOR:

CENTRAL CONTRA COSTA TRANSIT  
AUTHORITY

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: General Manager

Title: \_\_\_\_\_

APPROVED AS TO FORM:

\*By: \_\_\_\_\_

By: \_\_\_\_\_  
Attorney for County Connection

Title: \_\_\_\_\_

*\* 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*