
Agreement

AGREEMENT FOR TRANSIT ADVERTISING SERVICES

INDIAN RIVER COUNTY
and
SunUp Advantage, LLC

THIS AGREEMENT FOR TRANSIT ADVERTISING SERVICES ("Agreement") entered into this 11th day of February 2025, by and between the Indian River County, a political subdivision of the State of Florida, whose address is 1801 27th Street, Vero Beach, Florida, 32960, hereinafter referred to as the "COUNTY," and SunUp Advantage, LLC, hereinafter referred to as the "CONTRACTOR."

WITNESSETH THAT:

WHEREAS, COUNTY has publicly submitted a Request for Proposal (RFP), #2025017, for services to manage the sale and placement of advertising on County public transit vehicles; and

WHEREAS, CONTRACTOR timely submitted a Proposal for Transit Advertising Services that meets the standards set forth in the RFP; and

WHEREAS, CONTRACTOR and COUNTY desire to enter into this Agreement to perform such services for a three year period subject to the terms of this Agreement.

NOW, THEREFORE, in accordance with the mutual terms, understandings, conditions, promises, covenants, and payment hereinafter set forth, and intending to be legally bound, the parties hereto agree as follows:

Article 1. Purpose

1.1 The purpose of this Agreement is for CONTRACTOR to administer and carry out the day-to-day functions associated with interior and exterior advertising on COUNTY transit vehicles. During the course of this Agreement, the buses that have inside TV monitors will be phased out and replaced with buses that have room for slide in placard type advertisements. This Agreement shall cover the TV monitors as they are phased out and the new slide in placards.

Article 2. Scope of Work

2.1 On the terms and conditions set forth in this Agreement, COUNTY hereby engages CONTRACTOR to procure, sell, install, and maintain advertising on transit vehicles for COUNTY in accordance with and for the compensation specified in RFP 2025017, including Scope of Work/Services, Attachment F, Revenue Proposal, and Attachment E, Advertising Standards, all of which are attached hereto and incorporated herein.

Article 3. Additional Contractor Responsibilities

3.1 A Coordinator shall be appointed by the CONTRACTOR to coordinate the program with COUNTY. The name, address, and contact information for the Coordinator is: Don Wright, 1515 Indian River Blvd, Suite A245, Vero Beach, FL 32960, 772-569-7777.

3.2 CONTRACTOR shall be responsible for keeping exterior advertisements in good condition, free from fading, tears and peeling.

3.3 In all cases, CONTRACTOR shall notify the PROJECT MANAGER at least five (5) days in advance whenever CONTRACTOR requires access to a transit vehicle for the installation and/or removal of advertising media.

3.4 COUNTY reserves the right to remove a vehicle from its normal, regularly scheduled service for any reason, including but not limited to age, useful life, safety concerns, or accidents. In the case that a vehicle with advertising is removed from service, the installation of replacement advertising on a different vehicle shall be at the expense of CONTRACTOR with the COUNTY paying for the cost of the advertising materials (vinyl).

3.5 CONTRACTOR shall furnish a monthly report of gross billings to COUNTY along with payment. If payments were received by CONTRACTOR from a single client for other advertising media (such as radio, television, billboards, internet, etc) as part of a campaign or sales package, then CONTRACTOR will clearly identify only those revenues that were obtained for transit advertising.

3.6 This Agreement authorizes CONTRACTOR to procure advertising solely on the exterior of COUNTY vehicles and slide in placards on the interior of the bus and not on any bus facilities, on publications, or within vehicles as panel displays, or in any other format, unless approved by PROJECT MANAGER.

Article 4. Additional County Responsibilities

4.1 A PROJECT MANAGER shall be appointed to coordinate the program with CONTRACTOR. The PROJECT MANAGER may be an employee of COUNTY or its designated transit provider, the Senior Resource Association (SRA), and may be changed at any time in writing by the COUNTY. Such change shall be given in writing to Contractor within seven (7) days of PROJECT MANAGER change. The name, address, and contact information for the PROJECT MANAGER is: Karen Deigl, Senior Resource Association, 4385 43rd Avenue, Vero Beach, FL, 32967; Phone (772)569-0903; Email kdeigl@sramail.org.

4.2 Nothing shall preclude COUNTY from adding, modifying, or deleting any transit route. Additions, modifications, or deletions of transit routes will not impact COUNTY's responsibilities with respect to this contract. The COUNTY reserves the right to exclude placing advertising on any individual buses or routes for any reason.

4.3 COUNTY shall make a good faith effort to deploy specific vehicles on particular routes when requested. COUNTY reserves the right to replace vehicles on routes as it deems necessary.

4.4 At times, the COUNTY may be approached directly by an entity interested in sponsoring a specific bus or route in connection with a grant from the Florida Department of Transportation or similar government agency. The County reserves the right to offer advertising on a bus in exchange for sponsoring a bus or a route and that advertising shall not be deemed to fall under this Agreement and CONTRACTOR shall have no right to compensation under such circumstances. In such a case, the COUNTY shall not require the removal of any existing advertising on any vehicle subject to this agreement. The COUNTY will refer all other entities wishing to advertise on buses to CONTRACTOR and any advertisements that result from the referral will fall under this Agreement.

Article 5. Special Terms and Conditions

5.1 Termination. This Agreement may be terminated for convenience by mutual agreement in writing of both parties. This Agreement may also be terminated by COUNTY for cause, default, or negligence on the part of CONTRACTOR. In the event of termination by COUNTY for cause, CONTRACTOR shall provide payment in accordance with the RFP Scope of Services and RFP Attachment F attached to this agreement, which shall be the pro rata monthly minimum payment, plus the percentage of gross revenues, upon termination of this Agreement.

5.2 Subletting of Contract. This Agreement shall not be sublet except with the written consent of COUNTY. No such consent shall be construed as making COUNTY a party to the subcontract or subjecting COUNTY to liability of any kind to any subcontractor. No subcontract shall under any circumstances relieve CONTRACTOR of liability and obligations under this Agreement.

5.3 Insurance.

1. CONTRACTOR shall not commence work on this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by COUNTY's representative.

2. CONTRACTOR shall maintain during the term of this Agreement the following insurance:

A. Business Automobile Liability Insurance covering all owned, non-owned and hired vehicles with minimum limits of liability of \$1,000,000 per occurrence Combined Single Limit for bodily injury and property damage.

B. Commercial General Liability Insurance for premises/operations, products/completed operations, contractual liability, and independent contractors with minimum limits of liability of \$1,000,000 per occurrence Combined Single Limit for bodily injury and property damage.

C. Worker's Compensation Insurance in compliance with Chapter 440, Florida Statutes, as presently written or hereinafter amended. The policy must include Employers Liability with a limit of \$100,000 for each accident, \$500,000 for disease (policy limit), and \$100,000 for disease (employee limit).

3. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. All such insurers must have an A.M. Best rating of no less than A -VII.

4. CONTRACTOR shall furnish certificates of insurance to COUNTY prior to the commencement of operations, which certificates shall clearly indicate that CONTRACTOR has obtained insurance in the type, amount, and classification as required for strict compliance with this section and that no material change or cancellation of this insurance shall be effective without thirty (30) days prior written notice to COUNTY.

5. Compliance with the foregoing requirements shall not relieve CONTRACTOR of its liability and obligations under this section or under any other portion of this Agreement.

5.4 Indemnity. In consideration of the sum of Fifteen and 00/100 Dollars (\$15.00), the receipt and sufficiency of which is acknowledged by CONTRACTOR to be included and paid for in the contract price, CONTRACTOR shall indemnify, defend, and hold harmless COUNTY and its agents and employees from and against all liabilities, claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from the performance of the work, provided that any such liability, claim, damage, loss, or expense: a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting therefrom; and b) is caused in whole or in part by any negligent act or omission of CONTRACTOR, and subcontractor, anyone

directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in whole or in part by COUNTY.

In any and all claims against COUNTY or any of its agents or employees, by any employee of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under the previous paragraph shall not be limited in any way as to the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any subcontractor under Workers' Compensation Acts, disability benefit acts, or other employee benefit acts.

5.5 Independent Contractor. It is specifically understood and acknowledged by the parties hereto that CONTRACTOR or employees or contractors of CONTRACTOR are in no way to be considered employees of COUNTY, but are independent contractors performing solely under the terms of the Agreement and not otherwise.

5.6 Acceptance of Goods and Services. Any goods and/or service(s) rendered under this Agreement may be tested/inspected for compliance with specifications. In the event that any aspect of the goods or services provided is found to be defective or does not conform to the specifications, COUNTY reserves the right to require corrective action as appropriate which may include, but is not limited to, ordering re-performance of service or the termination of the Agreement for default.

5.7 Public Records Compliance.

1. Indian River County is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

A. Keep and maintain public records required by the County to perform the service.

B. Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law.

C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the County.

D. Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the Contractor or keep and maintain public records required by the County to perform the service. If the Contractor transfers all public records to the County upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the Custodian of Public Records, in a format that is compatible with the information technology systems of the County.

2. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

(772) 226-1424

publicrecords@indianriver.gov
Indian River County Office of the County Attorney
1801 27th Street
Vero Beach, FL 32960

3. Failure of the Contractor to comply with these requirements shall be a material breach of this Agreement.

5.8 Right to Audit. COUNTY reserves the right to require CONTRACTOR to submit to an audit by any auditor of COUNTY's choosing. CONTRACTOR shall provide access to all of its records, which relate directly or indirectly to this Agreement at its place of business during regular business hours. CONTRACTOR shall retain all records pertaining to this Agreement and upon request make them available to COUNTY for three (3) years following expiration of the Agreement. CONTRACTOR agrees to provide such assistance as may be necessary to facilitate the review or audit by COUNTY to ensure compliance with applicable accounting and financial standards.

5.9 Codes and Regulations. All work completed under this Agreement shall conform to all applicable federal, state, and local statutes, codes, regulations, and ordinances.

5.10 Venue. The laws of the State of Florida shall govern this agreement. Venue for any lawsuit brought by either party against the other party or otherwise arising out of this agreement shall be in Indian River County, Florida, or, in the event of federal jurisdiction, in the United States District Court for the Southern District of Florida.

5.11 Public Entity Crimes. A person or affiliate who has been placed on the convicted vendor list following a conviction of a public entity crime may not be awarded or perform work as a contractor, supplier, subcontractor under a contract with any public entity in excess of the threshold amount provided in Florida Statutes, section 287.07 for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

5.12 Termination in Regards to F.S. 287.135. CONTRACTOR certifies that it and those related entities of respondent as defined by Florida law are not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725 of the Florida Statutes, and are not engaged in a boycott of Israel. In addition, if this agreement is for goods or services of one million dollars or more, CONTRACTOR certifies that it and those related entities of respondent as defined above by Florida law are not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473 of the Florida Statutes and are not engaged in business operations in Cuba or Syria.

COUNTY may terminate this Contract if CONTRACTOR is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes, been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, as defined by section 287.135, Florida Statutes.

COUNTY may terminate this Contract if CONTRACTOR, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies that exist for the purpose of making profit, is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel as set forth in section 215.4725, Florida Statutes.

Article 6. Duration of Agreement

6.1. This Agreement shall remain in full force and effect for a period of three (3) years after its date of execution with one three (3) year renewal period.

Article 7. Entire Agreement

7.1 This Agreement and its Attachments hereto embody the whole agreement of the parties, and there are no provisions, terms, conditions, or obligations other than those contained herein. This agreement shall supersede all previous communications, representations, or oral agreements between the parties, and no amendment hereto shall be effective unless reduced to writing and signed by the parties hereto.

Article 8. Prohibited Interests

8.1 No member, officer, or employee of COUNTY during his/her tenure or for two years thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. This requirement also applies to any subcontract entered into by CONTRACTOR concerning this project.

Article 9. Miscellaneous Provisions

9.1. The terms of this Agreement may be modified upon the mutual agreement of CONTRACTOR and COUNTY as confirmed in writing.

9.3. All remedies provided in this Agreement shall be deemed cumulative and additional, and not in lieu or exclusive of each other or of any other remedy available to either party, at law or in equity. If any legal action or other proceeding is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, each party shall bear its own costs.

9.4. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable for the remainder of this Agreement, then the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

This Agreement will be effective on 11th day February of 2025 (the date the Contract is approved by the Indian River County Board of County Commissioners, which is the Effective Date of the Agreement).

COUNTY:

INDIAN RIVER COUNTY

By:

Joseph E. Flescher, Chairman

By:

John A. Titkanich, Jr., County Administrator

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: Jennifer W. Shuler County Attorney

Ryan L. Butler, Clerk of Court and Comptroller

Attest:

Deputy Clerk
(SEAL)

CONTRACTOR:

SunUp Advantage, LLC

By: _____

Name: _____

Title: _____

(CORPORATE SEAL)

(If CONTRACTOR is a corporation or a partnership, attach evidence of authority to sign.)

Attest: _____

Name: _____

Title: _____

Attachment F – Revenue Proposal

CONTRACTOR shall provide revenue sharing to the COUNTY calculated as shown below:

CONTRACTOR shall pay a Minimum Monthly Payment, as defined in Section 2.a of the Scope of Work, of:

\$500.00 / month X 12 = 6000

Plus:

CONTRACTOR shall pay 34 % of gross advertising revenues as defined in Section 2.a of the Scope of Work.

SunUp Advantage, LLC

Company Name



Signature of Authorized Representative