

AGREEMENT FOR TRANSIT ADVERTISING SERVICES

INDIAN RIVER COUNTY
and
SUNUP ADVANTAGE, LLC

THIS AGREEMENT FOR TRANSIT ADVERTISING SERVICES ("Agreement") entered into this _____ day of February, 2019, 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, a Florida limited liability company, whose address is 1515 Indian River Blvd, Suite A 236, Vero Beach, Florida, 32960, hereinafter referred to as the "CONTRACTOR."

WITNESSETH THAT:

WHEREAS, COUNTY has publicly submitted a Request for Proposal (RFP), #2018071, 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 Exhibit A, Scope of Work/Services, Exhibit B, Proposed Payment Schedule, and Exhibit C, 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: Name: Donald Wright Address: 1515 Indian River Blvd., Suite A236 Vero Beach, FL, 32960; Phone (772)569-7777; email: verodwright@gmail.com.
- 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 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 Exhibits A and B 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@ircgov.com

**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.

IN WITNESS OF THE FOREGOING, the parties have read this Agreement, including Attachment A, and attachments to it and have affixed their signatures, effective on the date first appearing above.

SUNUP ADVANTAGE, LLC

INDIAN RIVER COUNTY
BOARD OF COUNTY COMMISSIONERS

BY: _____
Donald N. Wright, Manager

BY: _____
Bob Solari, Chairman

ATTEST:
Jeffrey R. Smith, Clerk to the Board

BY: _____
Deputy Clerk

Approved as to Form and
Legal Sufficiency

Approved for BCC Agenda:

William K. DeBaal
Deputy County Attorney

Jason E. Brown
County Administrator

Exhibit A

STATEMENT OF WORK & SCOPE OF SERVICES

The purpose of this solicitation is to acquire services from qualified and experienced firms who will be responsible for the management of the advertising program on public transportation vehicles in Indian River County. These services include sales, installation, invoicing, maintenance, customer service, and removal of ads on the exterior of vehicles in the public transportation fleet.

General Information

Indian River County's public transportation system consists of the GoLine fixed route system and the Community Coach demand response service. Both GoLine and Community Coach operated under contract by the Senior Resource Association. At this time, GoLine consists of 15 routes (one vehicle per route) throughout Indian River County. A copy of the current route map and schedule is attached (see Attachment B). Community Coach provides door-to-door service throughout Indian River County. Typically, 13 Community Coach vehicles are in operation on weekdays (and five vehicles on Saturdays). Community Coach operating hours are the same as GoLine.

The combined GoLine/Community Coach fleet, including spares, consists of 56 vehicles. Most of these vehicles were purchased through grants to the County by the Federal Transit Administration (FTA).

Length of Contract

The contract will be for a period of three (3) years. Prior to, or upon completion, County shall have the option to renew this contract for one additional three (3) year period. Prior to completion of each exercised contract term, County may consider an adjustment to price.

County reserves the right to reject any written price adjustments submitted by Contractor and/or to not exercise any otherwise available option period based on such price adjustments. Continuation of the contract beyond the initial period, and any option subsequently exercised, is a prerogative of County and not a right of Contractor. This prerogative will be exercised only when such continuation is clearly in the best interest of Indian River County.

Project Requirements

As noted above, the project involves providing advertising services for the Indian River County transit system. Although this is not a contract to procure services using FTA funds, the County, as an FTA recipient, is required to follow FTA regulations regarding all procurement and contracting. Consequently, certain federal requirements (such as equal employment opportunity provisions) will apply to the contract for this project. These requirements are

contained in Appendix A of the RFP.

Scope of Services

1. TRANSIT ADVERTISING SERVICES

- 1.a Contractor shall furnish all necessary sales, installation and maintenance personnel, and an account representative, authorized to act hereunder on behalf of Contractor. The responsibilities of Contractor shall include:
- Aggressive sales of advertising display space on GoLine and Community Coach buses and publications.
 - Billing for and collection of sold advertising space.
 - Preparation and submittal of related financial and operating reports.
 - Placement and maintenance of advertising materials, including preparing of advertising materials for installation, scheduling of work and removing expired materials, to be performed at Contractor's sole expense.
- 1.b All advertising materials, advertisements and manner of presentation shall be subject to prior approval by the Project Manager. Contractor shall not place advertising which is libelous, slanderous, obscene, salacious, or unlawful. Advertising, advertisements, or a manner of presentation which negatively impacts the transit system is not permitted. Advertising for tobacco, liquor of any type, political messages, or any other inappropriate advertising is prohibited.
- 1.c All permissible exterior formats are shown in Attachment D, Bus Diagrams and Advertising Standards.
- 1.d Contractor's advertising standards shall be incorporated into any resulting Contract and shall be made a part hereof. Contractor shall solely be responsible for the implementation and enforcement of said advertising standards. Contractor shall not modify or amend its advertising standards, which are to be submitted with the proposal and shall become a part of this Contract, without first obtaining the prior written consent of the Project Manager. This may require an Amendment to the Contract prior to implementation.
- 1.e At his/her sole discretion, the Project Manager may disapprove at any time any items found to be in violation of the standards stated in Section 1.d above. As soon as practicable, but in no instance more than five (5) days after receipt of notice, Contractor, at its sole cost and expense, shall remove from County property any item which is not approved. Any items previously approved, which may subsequently be considered

objectionable by the SRA or County, shall likewise be removed after notice to Contractor by the Project Manager.

If the disapproved material is not removed within the time prescribed, County may cause said material to be removed and Contractor shall pay all costs and expenses incurred to have said material removed. County shall not be liable for any damages in connection therewith. Refusal by Contractor to remove said material shall be considered a default of this Contract. The Contract shall then be considered as terminated by the corrective action on the part of County including reimbursement of all costs and expenses to County.

If, after prior Project Manager approval, the ad content is subsequently deemed to be unacceptable, Contractor shall have the capability to recoup its costs for production and installation of the disapproved material. Contractor shall have the right to deduct these amounts from its monthly payment to County.

- 1.f All dated messages or messages featuring a special event shall be removed within seven (7) days of the date shown on the advertisement or date of the event.
- 1.g Contractor shall at all times comply with any policy, program, rule, ordinance or resolution adopted or enacted by County, and as may be amended from time to time, relating to County's policy on advertising/speech on the bus fleet. In the event that County shall determine that no Public Service Announcements may be made and/or that only commercial speech shall be permitted, Contractor shall adhere to and enforce County's policy and shall take all steps necessary to remove any non-conforming advertisements, statements, exhibits, etc.
- 1.h Contractor shall not solicit or engage in any form of advertising on bus stop signs, bus shelters, benches, trash receptacles, or any other fixed bus stop amenities.

2. COMPENSATION TO COUNTY

- 2.a On a monthly basis, Contractor shall pay as compensation to County, without set off, deduction, diminution, reduction, abatement or counterclaim, except as expressly provided herein, the following:
 - The specified minimum monthly payment as specified in Contractor's Revenue Proposal; plus
 - The percent of Contractor's gross advertising revenues as defined below and as specified in Contractor's Revenue Proposal.
- 2.b The gross advertising revenues referred to above shall be the gross revenues derived by Contractor, or any subsidiary, affiliate, agent, assignee, contractor, licensee, transferee

or lessee of Contractor from the display of advertising material on or in the buses, herein authorized. The gross revenues shall be calculated on the basis of total amounts contracted for by the advertisers for the display of advertising materials, whether paid directly to Contractor, to a subsidiary or affiliate of Contractor, or to a third party. Agency fees or any other fees, whether actually paid by Contractor or whether deducted from the amount of revenue received by Contractor shall not be deducted from gross advertising revenues. The gross revenues shall include any amount, the equivalent of which Contractor, a subsidiary or affiliate of Contractor, or a third party may have received from the advertiser in the form of materials, services, or other benefits, tangible or intangible. All agreements made by Contractor in connection with the display of advertising material on or in said buses shall provide that the U.S. Department of Transportation, the Comptroller General, County, or SRA shall have access to the books of account and records of all parties to such agreements for the purpose of ascertaining the correctness of gross advertising revenues.

- 2.c Contractor agrees to use its best efforts to obtain the fair market value for the display of all advertising material.
- 2.d Contractor agrees to include in all its contracts for the display of advertising material a standard provision requiring that should Contractor be held in default under this agreement, Contractor shall assign and transfer to the successor contractor all applicable contracts for advertising on GoLine/Community Coach items (i.e., buses- (internal and external)), and such contracts shall thereupon become the property of the successor contractor.
- 2.e Compensation shall be sent to County monthly within fifteen (15) days after the end of the month except in the case of the last payment when compensation shall be paid within thirty (30) days after the termination, cancellation or expiration of this Contract. Each payment shall be based on the gross receipts for the month immediately preceding the date of payment, which will include the percentage of gross advertising revenue plus the minimum payment as identified in 2.a.
- 2.f Payments of compensation made by Contractor to County pursuant to the provisions of this Contract shall not be considered in any manner to be in the nature of a tax, but shall be in addition to all taxes of whatsoever kind or description which are now or which may thereafter be required to be paid by any ordinance or local law of Indian River County or any Municipality or City within County, or any law of the State of Florida or any law of the Federal Government of the United States. Payment of compensation shall be in addition to any permit fees required by law.
- 2.g In the event the Contractor fails to pay any of the monies required to be paid under this contract within thirty (30) days after same shall become due, interest at the rate of 1.5% per month, or eighteen percent (18%) per annum, shall accrue against the delinquent payment(s) from due date until same are paid. Implementation of this provision shall not

preclude County from terminating this contract for default for nonpayment, or from enforcing any other provisions contained herein.

- 2.h Project Manager reserves the right to remove vehicles from service, substitute vehicles, reassign vehicles, or otherwise deploy vehicles as needed for the safe and efficient operation of the transit system regardless of the impact to the advertising program.
- 2.i In the event a bus is out-of-service for a period of ten (10) continuous operating days or longer, the monthly fee shall be reduced proportional to the number of service days in which the bus was not operational. In the event a reduction is due in the last month of the contract, County will issue a refund.

3. REPORTING REQUIREMENTS

- 3.a Contractor shall submit to the Project Manager for approval a proposed record and reporting system to substantiate billing, sales, commissions and payments.
- 3.b On or before the fifteenth (15) day following the end of each calendar month throughout the term of this Contract or any extension thereof, Contractor shall furnish to the Project Manager a report of gross billings; display type; total space availability; total space sold; advertisement expiration date(s); and total space used for public service advertisement.
- 3.c Contractor shall, within ninety (90) days of each anniversary date of this Contract, submit to the Project Manager a report prepared and signed by an independent Certified Public Accountant, as to Contractor's operations under this Contract. Said report shall be prepared in conformance with the American Institute of Certified Public Accountants' requirements for special reports. The first such report shall contain twelve (12) full calendar months of operation and any fraction of the first month. The last such report shall include the last day of operation.

4. RATES

- 4.a Contractor shall establish rates and charges of the rental of advertising space in/on buses. All rates and charges shall be subject to review and approval by the Project Manager.
- 4.b County recognizes that the sale of advertising display space is frequently subject to negotiation. Therefore, Contractor may enter, with the Project Manager's prior approval, into advertising contracts which deviate from the approved sales rate, provided that the deviation is within normal and customary practices of the advertising industry.

5. BUS ADVERTISING MEDIA

- 5.a Exterior media shall be a 3M or equivalent approved vinyl, as approved by the Project

Manager, that is either removable or changeable on fleet vehicles. Any change of vinyl product shall be approved by the Project Manager.

6. MAINTENANCE BY CONTRACTOR

- 6.a Contractor shall not deface or damage any County property or deposit or scatter any rubbish, waste or litter caused by any of its representatives or employees during the performance of this Contract.
- 6.b Contractor will maintain all advertising devices and keep them in good repair and free of graffiti at all times.
- 6.c Contractor shall reimburse County for the cost of repairs for any damage to the bus or any other property which is caused by Contractor, its employees, and agents during the installation or removal of any advertising media. The cost of the repairs shall include all material and labor. Labor cost shall be at the current rate plus fringe benefits.
- 6.d All application and maintenance of advertising media shall be performed on County's premises. In no event shall Contractor remove a bus from County facilities.

County shall make available to Contractor suitable space for the application and maintenance of advertising.

7. MANAGEMENT OF PRE-EXISTING ADVERTISING CONTENT CONTRACTS

- 7.a Contractor is required to provide management services for all previously existing advertising contracts which are scheduled to continue beyond the starting date of the contract resulting from this RFP. This will include maintaining the advertising media, servicing the account as if Contractor was the original seller of the material, collecting payments from the client, reporting to and paying SRA the collections made and removing the advertising when the advertising contract expires.
- 7.b Upon termination of this Contract, Contractor agrees to assign to its successor advertising contractor all active advertising content contracts on County's buses and such content contracts shall thereupon become property of the successor advertising contractor.

The Successful Proposer will be engaged to perform services under an agreement as an independent contractor, and not as an agent, of Indian River County.

Exhibit B

Sunup Payment Schedule

Month	Minimum Monthly Payment	Percent Gross Revenue
1-36	\$500 Plus	34%

Exhibit C

ADVERTISING STANDARDS

This advertising program for public transit vehicles is created and administered by Indian River County, Florida. The advertising program is intended to be a nonpublic forum and is not intended to be used for public discourse. The purpose of the program is to raise revenue for public transportation in Indian River County. Commercial advertising is permitted on designated areas of transit vehicles in accordance with the commercial advertising standards, rules, and policies.

The display of material pursuant to this advertising program does not necessarily state or reflect the opinion, viewpoint, or position of Indian River County, its Board of County Commissioners, or its employees, and shall not be construed as an implicit or explicit endorsement of any opinion, viewpoint, position, service, product, or good.

1. All advertising must be reviewed and approved by COUNTY prior to placement in the transit system, and any advertising placed without prior County approval is subject to immediate removal.
2. The following kinds of advertisements are prohibited:
 - a. Advertising associated with cigars, cigarettes, e-cigarettes, vaping, pipe tobacco, chewing tobacco, and other tobacco products.
 - b. Advertising associated with alcoholic beverages, including but not limited to beer, wine, and distilled spirits.
 - c. Advertising associated with products or services related to human reproduction or sexuality, including but not limited to contraceptive products or services, other products or services related to sexual hygiene and counseling with regard to pregnancy, abortion, or other sexual matters.
 - d. Advertising associated with products, services, or entertainment directed to sexual stimulation.
3. The following categories of advertisements are prohibited:
 - a. *Demeaning or disparaging*. Advertisement containing material that demeans or disparages an individual or group of individuals on the basis of race, color, religion, national origin, ancestry, gender, age, disability, ethnicity, or sexual orientation.
 - b. *Profanity*. Advertisement containing profane language.
 - c. *Firearms*. Advertisement containing an image or depiction of firearms.
 - d. *Violence*. Advertisement containing an image or description of graphic violence or the depiction of weapons or other implements or devices associated with an act or acts of violence or harm to a person or animal
 - e. *Unlawful goods or services*. Advertisement or any material contained in it, which promotes or encourages, or appears to promote or encourage, unlawful or illegal goods or services.
 - f. *Unlawful conduct*. Advertisement or any material contained in it, which promotes or encourages, or appears to promote or encourage, unlawful or illegal behavior or activities.

- g. *Nudity*. Advertisement or any material contained in it, which has an image or depiction of nudity, or the appearance of nudity.
- h. *Endorsement*. Advertisement or any material contained in it, which implies or declares an endorsement by COUNTY or the Board of County Commissioners.
- i. *Political*. Advertisement which includes but is not limited to advertisements identifying and urging support for or in opposition to a particular issue, party, or candidate for public office.
- j. *“Adult”-oriented goods or services*. Advertisement which promotes or encourages, or appears to promote or encourage, adult book stores, nude dance clubs and other adult entertainment establishments, adult telephone services, adult Internet sites, and escort services.
- k. *Potential Danger*. Advertisement which displays the word “stop”, “drive”, “danger” or any other word, phrase, symbol, lighting, or any device or any components thereof, or character likely to interfere with or mislead pedestrian or vehicular traffic.

Attachment A

Required U.S Department of Transportation Federal Transit Administration (FTA) Contract Clauses

The following clauses will be applicable to any agreement awarded under this solicitation:

Energy Conservation

Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

Access to Records and Reports

The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$150,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the

event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11) and as consistent with State Public Record and Sunshine laws.

FTA does not require the inclusion of these requirements in subcontracts.

Federal Changes

Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

Recycled Products

All contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the current or previous fiscal year using Federal funds. The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

No Government Obligation to Third Parties

(1) The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts

(1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

(2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.

(3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Breaches and Dispute Resolution

Disputes regarding the proposed contract will be handled as follows: Disputes arising in the performance of the proposed agreement which are not resolved by agreement of the parties shall be decided in writing by the County Project Manager. This decision shall be final and conclusive unless within ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the County Administrator. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the County Administrator shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the recipient and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State.

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the recipient or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Government Wide Debarment and Suspension (Non Procurement)

The Recipient agrees to the following: (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," <http://https.www.sam.gov,.proxy1.semalt.design> if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at <http://https.www.sam.gov,.proxy1.semalt.design> if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debars, or takes any similar

action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel,

Civil Rights Requirements

1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor will agree that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2) Equal Employment Opportunity - The following equal employment opportunity requirements will apply to the proposed contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Consultant agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3) The Contractor will also agree to include the foregoing requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Disadvantaged Business Enterprise

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.

b. The contractor shall not discriminate on the basis of race, color, religion, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. If a separate contract goal has been established, Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.

d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.

f. The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

Privacy Act

1) The Contractor will agree to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor will agree to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor will understand that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

2) The Contractor will also agree to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Prompt payment

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.