

ORIGINAL

El Dorado County Transit Authority Apple Farms Shuttle 2018 Project Additional Services

FUNDING AGREEMENT #3612

THIS AGREEMENT, made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and El Dorado County Transit Authority, a joint powers agency comprised of the City of Placerville and the County of El Dorado, whose address is 6565 Commerce Way, Diamond Springs, California 95619 (hereinafter referred to as "El Dorado Transit");

RECITALS

WHEREAS, El Dorado County Air Quality Management District (EDCAQMD) provided funding to El Dorado Transit for the Apple Farms Shuttle 2018 Project under Agreement #3397;

WHEREAS, County's Community Development Services, Department of Transportation, determined that it was necessary to obtain additional shuttle services to supplement the Apple Farms Shuttle 2018 Project due to the Project's popularity and ridership demands;

WHEREAS, the Board of Supervisors authorized the use of Economic Development Funds for the purpose of providing additional shuttle services at its October 25, 2018, meeting, Legistar #18-1672;

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable state and local laws;

WHEREAS, County has determined that the provision of such services provided by El Dorado Transit are in the public's best interest and that these services are more economically and feasibly performed by El Dorado Transit, as well as authorized by El Dorado County Charter, Section 210(b)(6) and/or Government Code Section 31000;

NOW, THEREFORE, County and El Dorado Transit mutually agree as follows:

ARTICLE I

Scope of Services: El Dorado Transit agrees to furnish personnel, equipment, vehicles, materials, and services necessary to provide the additional shuttle services required for the Apple Farms Shuttle 2018 Project. Services shall include, but not be limited to, those tasks as identified in Exhibit A, marked "Scope of Work," and to be completed in accordance with Exhibit B, marked "Cost Estimate," both exhibits incorporated herein and made by reference a part hereof.

If a submittal or deliverable is required to be an electronic file, El Dorado Transit shall produce the file using Microsoft (MS) Office 2010 applications (specifically, MS Word, MS Project and MS Excel). Signed reports shall be submitted in Adobe portable document format (PDF). All deliverables shall be submitted in language, format, and design that are compatible with and completely transferable to County's computer and that are acceptable to County's Contract Administrator. Newer versions of software may be used and other types of software used for analytical purposes may be authorized if approved in advance of the submittal by County's Contract Administrator. El Dorado Transit shall submit all deliverables to County's Contract Administrator in accordance with completion time schedules identified in this Agreement and Exhibit A. Failure to submit the required deliverables in the format required shall be grounds for termination of the Agreement, as provided in ARTICLE X, Default, Termination, and Cancellation, herein.

All of the services included in this Article and Exhibit A, are the responsibility of El Dorado Transit, unless specifically described as a task or item of work to be provided by County. El Dorado Transit shall be responsible for the supervision, administration, and work performed by any subconsultant, if applicable, for services rendered under this Agreement.

ARTICLE II

Term: This Agreement shall become effective upon final execution by both parties hereto and shall cover the period of services provided by El Dorado Transit from August 21, 2018 through November 30, 2018 and shall terminate after El Dorado Transit receives the final payment provided for in this Agreement.

ARTICLE III

Compensation for Services: For services provided herein, including any deliverables that may be identified herein, County agrees to pay El Dorado Transit upon the satisfactory completion and County's acceptance of work, in arrears. Payment shall be made within forty-five (45) days following County's receipt and approval of itemized invoices identifying the services rendered.

The total amount of this Agreement shall not exceed \$41,903.50, inclusive of all services, costs, and expenses. El Dorado Transit shall not include any costs or services in its itemized invoices that were paid through an independent grant agreement or by any other funding source.

Itemized invoices shall follow the format specified by County and shall reference this Agreement number on their faces. Copies of documentation attached to invoices shall reflect EL Dorado Transit's charges for the specific services billed on those invoices. Invoices shall be mailed to County at the following address:

County of El Dorado
Community Development Services
Department of Transportation
2850 Fairlane Court
Placerville, California 95667
Attn.: Shanann Findley

or to such other location as County directs.

In the event that El Dorado Transit fails to deliver, in the format specified, the deliverables required by this Agreement, County at its sole option may delay the payment for the period of time of the delay, cease all payments until such time as the required deliverables are received, or proceed as set forth below in ARTICLE X, Default, Termination, and Cancellation, herein.

ARTICLE IV

Taxes: El Dorado Transit certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by El Dorado Transit to County. El Dorado Transit agrees that it shall not default on any obligations to County during the term of this Agreement.

ARTICLE V

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE VI

Assignment and Delegation: El Dorado Transit is engaged by County for its unique qualifications and skills as well as those of its personnel. El Dorado Transit shall not subcontract, delegate, or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

ARTICLE VII

Independent Contractor/Liability: El Dorado Transit is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by the terms of this Agreement. El Dorado Transit exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

El Dorado Transit shall be responsible for performing the work under this Agreement in a safe, professional, skillful, and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to El Dorado Transit or its employees.

ARTICLE VIII

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment, or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products, or equipment subject herein. Such notice shall become effective upon the adoption of a final budget, which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce or order a reduction in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE IX

Audit by California State Auditor: El Dorado Transit acknowledges that if total compensation under this Agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code § 8546.7. In order to facilitate these potential examinations and audits, El Dorado Transit shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the Agreement, all books, records, and documentation necessary to demonstrate performance under the Agreement.

ARTICLE X

Default, Termination, and Cancellation:

- A. **Default:** Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (Time to Cure), then such party shall be in default. The Time to Cure may be extended at the discretion of the party giving notice. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the Time to Cure has expired. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

- B. Bankruptcy: This Agreement, at the option of County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of El Dorado Transit.
- C. Ceasing Performance: County may terminate this Agreement in the event El Dorado Transit ceases to operate as a business or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: County may terminate this Agreement in whole or in part upon seven (7) calendar days' written notice by County without cause. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates, as set forth in the Notice of Termination provided to El Dorado Transit, and for such other services which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the Agreement. Upon receipt of a Notice of Termination, El Dorado Transit shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise.

ARTICLE XI

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

To County:

County of El Dorado
Community Development Services
Department of Transportation
2850 Fairlane Court
Placerville, California 95667

With a copy to:

County of El Dorado
Chief Administrative Office
2850 Fairlane Court
Placerville, California 95667

Attn.: Rafael Martinez
Director

Attn.: Michele Weimer
Procurement & Contracts Manager

or to such other location as County directs.

Notices to El Dorado Transit shall be addressed as follows:

El Dorado County Transit Authority
6565 Commerce Way
Diamond Springs, California 95619

Attn.: Brian James, Planning and Marketing Manager

or to such other location as El Dorado Transit directs.

ARTICLE XII

Change of Address: In the event of a change in address for El Dorado Transit's principal place of business, El Dorado Transit's Agent for Service of Process, or Notices to El Dorado Transit, El Dorado Transit shall notify County in writing as provided in ARTICLE XI, Notice to Parties. Said notice shall become part of this Agreement upon acknowledgment in writing by County's Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

ARTICLE XIII

Indemnity: El Dorado Transit shall defend, indemnify, and hold County and its officers, agents, employees, and representatives harmless against and from any and all claims, suits, losses, damages, and liability for damages of every name, kind, and description, including attorneys' fees and costs incurred, brought for, or on account of, injuries to, or death of, any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to, or in any way arise out of, or are connected with El Dorado Transit's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of County, El Dorado Transit, subcontractor(s), and employee(s) of any of these, except for the sole or active negligence of County, its officers, agents, employees, and representatives, or as expressly prescribed by statute. This duty of El Dorado Transit to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XIV

Insurance: El Dorado Transit shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that El Dorado Transit maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of El Dorado Transit as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by El Dorado Transit in performance of the Agreement.

- D. In the event El Dorado Transit is a licensed professional or professional consultant and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.
- E. El Dorado Transit shall furnish a certificate of insurance satisfactory to County's Risk Management Division as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to County's Risk Management Division or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. El Dorado Transit agrees that the insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, El Dorado Transit agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and El Dorado Transit agrees that no work or services shall be performed prior to the giving of such approval. In the event El Dorado Transit fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
 - 1. The insurer will not cancel the insured's coverage without prior written notice to County; and
 - 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. El Dorado Transit's insurance coverage shall be primary insurance as respects County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be in excess of El Dorado Transit's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects County, its officers,

officials, employees, and volunteers; or El Dorado Transit shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to County, its officers, officials, employees, or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers, and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. El Dorado Transit's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- N. In the event El Dorado Transit cannot provide an occurrence policy, El Dorado Transit shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. The certificate of insurance shall meet such additional standards as may be determined by the contracting County department, either independently or in consultation with County's Risk Management Division as essential for protection of County.

ARTICLE XV

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by El Dorado Transit under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XVI

Nondiscrimination:

- A. County may require El Dorado Transit's services on projects involving funding from various state and/or federal agencies, and as a consequence, El Dorado Transit shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: El Dorado Transit and its employees and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, genetic information, military or veteran status, marital status, age, gender, gender identity, gender expression, sexual orientation, or sex; El Dorado Transit shall, unless exempt, comply with the

applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285.0 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended. El Dorado Transit and its employees and representatives shall give written notice of their obligations under this clause as required by law.

- B. Where applicable, El Dorado Transit shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. El Dorado Transit's signature executing this Agreement shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code Sections 12990 and 8355 and Title 2, California Code of Regulations, Section 8103.

ARTICLE XVII

California Residency (Form 590): If El Dorado Transit is a California resident, El Dorado Transit must file a State of California Form 590, certifying its California residency or, in the case of a limited liability company or corporation, certifying that it has a permanent place of business in California. El Dorado Transit will be required to submit a Form 590 prior to execution of this Agreement, or County shall withhold seven (7) percent of each payment made to El Dorado Transit during the term of this Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

ARTICLE XVIII

County Payee Data Record Form: All independent contractors or corporations providing services to County who do not have a Department of the Treasury Internal Revenue Service Form W-9 (Form W-9) on file with County must file a County Payee Data Record Form with County.

ARTICLE XIX

Business License: County's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Ordinance Code Section 5.08.070. El Dorado Transit warrants and represents that it shall comply with all of the requirements of County's Business License Ordinance, where applicable, prior to beginning work under this Agreement and at all times during the term of this Agreement.

ARTICLE XX

Licenses: El Dorado Transit hereby represents and warrants that El Dorado Transit and any of its subcontractors employed under this Agreement has all the applicable

licenses, permits, and certifications that are legally required for El Dorado Transit and its subcontractors to practice its profession or provide the services or work contemplated under this Agreement in the State of California. El Dorado Transit and its subcontractors shall obtain or maintain said applicable licenses, permits, or certificates in good standing throughout the term of this Agreement.

ARTICLE XXI

California Forum and Law: Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

ARTICLE XXII

Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is Rafael Martinez, Director, Community Development Services, Department of Transportation, or successor.

ARTICLE XXIII

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

ARTICLE XXIV

Partial Invalidity: If any provision, sentence, or phrase of the Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions, sentences, and phrases will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XXV

No Third Party Beneficiaries: Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.

ARTICLE XXVI

Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

ARTICLE XXVII

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties, and they incorporate or supersede all prior written or oral agreements or understandings.

Requesting Contract Administrator and Department Concurrence:

By: 
Rafael Martinez, Director
Community Development Services
Department of Transportation

Dated: 1/17/19

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

-- COUNTY OF EL DORADO --

By: _____

Dated: _____

Board of Supervisors
"County"

Attest:
James S. Mitrisin
Clerk of the Board of Supervisors

By: _____

Dated: _____

Deputy Clerk

-- EL DORADO COUNTY TRANSIT AUTHORITY --

By: Mindy Jackson

Dated: 1/16/19

Mindy Jackson
Executive Director
"El Dorado Transit"

El Dorado County Transit Authority

Exhibit A

Scope of Work

1) El Dorado Transit shall operate free shuttles, or charter for shuttle services to be operated, on a continuous loop from 9:00 am to 4:00 pm, or as directed, on weekend days in October 2018, linking the designated parking area in Camino to Apple Farms ranches and wineries.

Schedule: Saturday and Sunday, October 6 & 7, 2018
Saturday and Sunday, October 13 & 14, 2018
Saturday and Sunday, October 20 & 21, 2018
Saturday and Sunday, October 27 & 28, 2018

2) El Dorado Transit shall provide additional transit vehicles and support staff based on demand as requested by County. Vehicle sizes shall range from four (4) to forty-five (45) passengers per vehicle. Support staff shall include transit operators, transit operations supervisors, transit dispatchers, maintenance staff (mechanics and technicians), office assistants, fiscal technicians, project manager, operations manager, planning & marketing manager, and finance manager.

3) El Dorado Transit shall board passengers at safe, marked locations approximately every fifteen (15) to twenty (20) minutes, depending upon traffic.

4) El Dorado Transit shall employ only properly trained and licensed transit operators.

5) El Dorado Transit shall maintain shuttle vehicles in a safe, operable condition and provide copies of maintenance records and California Highway Patrol inspection reports upon request.

6) El Dorado Transit shall track, record, and report number of one way rider trips.

7) El Dorado Transit shall coordinate with local oversight agencies and County.

Deliverable and Schedule:

A final comprehensive performance report shall be prepared by El Dorado Transit and submitted to County prior to invoicing County for services.

El Dorado County Transit Authority

Exhibit B

Cost Estimate

<u>Task</u>	<u>Description</u>	<u>Cost</u>
1	Shuttle Prep and Closing	\$11,505.61
2	Shuttle Operations	\$11,054.56
3	Transit Equipment	\$19,343.33

Total Project Cost Estimate \$41,903.50

All expenses and their distribution among Tasks are estimates only. This Exhibit represents the composition of the total not-to-exceed budget for this Agreement. In the performance of the Scope of Work to be provided in accordance with this budget, El Dorado Transit may request to reallocate the expenses listed herein among the various Scope of Work Tasks, subject to County's Contract Administrator's prior written approval. In no event shall the total not-to-exceed amount of the Agreement be exceeded.