

## **Board of Trustees Agenda Item**

**Board Meeting Date:** January 7, 2013

**Title of Item:** Advertising Contract with The Lamar Companies

### **Background and Analysis:**

De Anza College is continuing its public information and marketing campaign with a view toward maintaining awareness of the college and increasing enrollment, including through promotion of newly added classes and the Eco Pass. Bus ads continue to be a primary advertising medium for the college.

The Lamar Companies is the agent for bus advertising with the Valley Transit Authority. This contract is for king (side) and full back space rental on VTA buses. The campaign will run from March 4, 2013 through April 14, 2013. It will result in 24,675,847 total impressions of the advertisements.

### **Recommendation:**

De Anza President Brian Murphy recommends that the Board approve the contract with The Lamar Companies in the amount of \$90,500.

Submitted by:	Brian Murphy, President, ext 8705
Additional contact names:	Marisa Spatafore, Director Marketing & Communications, ext 8672
Is backup provided?	Yes

## Foothill - De Anza Community College District

# INDEPENDENT CONTRACTOR AGREEMENT

De Anza College ☒ Foothill College ☐ District Office ☐ District PO No: \_\_\_\_\_

This Agreement entered into this 4 day of December, 2012 is made between the Foothill-De Anza Community College District, hereinafter referred to as the "DISTRICT", and the following named independent contractor; hereinafter referred to as the "CONTRACTOR", based upon Board Policies BP 3140, BP3143, AP 3140, and AP3143 and the following legal citations:

- A. Government Code Section 53060 authorizes the engagement of persons to perform special services as independent contractors; and
- B. Public Contract Code 20651 requires advertised sealed bids for public projects of \$15,000 or more and most other services of \$69,000 or more. If sealed bids are required, this form of agreement cannot be used;
- C. Government Code Section 8546.7 provides that the contracting parties for any contract involving expenditure of public funds in excess of \$10,000 shall be subject to examination and audit by the State Auditor for a period of three (3) years after final payment under the contract.
- D. The public interest, convenience, necessity and general welfare will be served by this Agreement.

If this agreement has a total cost that exceeds \$20,000, it is not valid and services shall not commence unless and until the Board of Trustees grants approval. **Do not use this form for public project contracts of \$15,000 or more.**

### 1. CONTRACTOR INFORMATION:

Contractor's Name The Lamar Companies

Address 5551 Corporate Blvd. City Baton Rouge LA Zip 70808

Business Phone 800.262.7235 Fax No 925.373.1991 Home \_\_\_\_\_

Social Security Number N/A \*Fed. Tax I.D. Number 72 1309005

\*CONTRACTOR MUST PROVIDE W-9

Business License Number N/A

Are you a current or former employee of the DISTRICT? Yes ☐ No ☒

If yes, date last worked \_\_\_\_\_

If yes, specify last work location \_\_\_\_\_

Work Assignment \_\_\_\_\_

Are you related to any employee(s) in the DISTRICT? Yes ☐ No ☒

If yes, please identify the individual(s) \_\_\_\_\_

### 2. CONTRACTOR SELECTION PROCESS:

Describe how you selected this contractor and why this contractor is the best source for these services. Board Policy 3140 requires at least three written competitive quotations for public projects greater than \$1000 and other purchases greater than \$10,000. If you did not obtain competitive quotes, provide justification. Advertised competitive bidding by District Purchasing Services is legally mandated for most services in excess of the bid threshold (currently \$69,000) and for all public projects of \$15,000 or more pursuant to Public Contract Code 20651.

Lamar is the agent for the Valley Transportation Authority (VTA) on whose buses De Anza College wants to advertise for spring quarter 2013. Lamar is the only contractor that provides advertising for VTA buses.

3. CONTRACTOR SERVICES, FEE, AND CONTRACT STARTING AND ENDING DATES:

A. Description of services and deliverables to be provided by contractor (refer to and attach contractor's signed proposal or quotation if possible):

Fullbacks space rental on 50 buses, March 4-April 14, 2013  
King side space rental on 50 buses, March 4-April 14, 2013

B. Contractor Fee for Services: \$ 90,000.00

(Indicate a fixed fee to be paid for all of the described services or indicate hourly or other periodic billing rate(s) plus a maximum total dollar cost, i.e. the "not to exceed" amount, to be paid to the contractor. If travel or other expenses will be reimbursed they should conform to Board Policy AP3152.)

Will contractor also be reimbursed for expenses? YES ☐ or NO ☒ If yes, state maximum reimbursement amount to be paid in addition to contract fee shown above:  
\$ \_\_\_\_\_

TOTAL COST OF THIS INDEPENDENT CONTRACT WILL NOT EXCEED \$ 90,000.00  
INCLUDING CONTRACTOR TRAVEL OR OTHER EXPENSE REIMBURSEMENTS. [Total cannot exceed \$14,999 for public projects. Board approval required prior to commencement of other services if the total cost exceeds \$20,000.]

C. Contract Starting Date March 4, 2013 Contract Ending Date April 14, 2013

Note: It is not permissible to split the contracted services into two or more contracts within one fiscal year for the purpose of avoiding the requirement for Board of Trustees approval.

4. DISTRICT OBLIGATIONS OTHER THAN PAYMENT, IF ANY:

N/A

5. PAYMENT TERMS: Unless other payment terms are specified in this section, payment terms are Net 30 days computed either from the date of delivery and acceptance of the contract services or from the date of receipt of correct and proper invoices prepared in accordance with the terms of the contract, whichever date is later.

**6. STANDARD TERMS AND CONDITIONS:**

- A.** CONTRACTOR is solely responsible for the content and sequence of the work. DISTRICT will not provide any training or instruction to CONTRACTOR or its employees.
- B.** Confidentiality: In performing its duties hereunder the Contractor may from time to time gain incidental access to confidential information and records including student record information as defined by 20 USC section 1232g. The parties agree that such incidental access is not a provision or conveyance or disclosure to contractor of student record information in violation of section 1232g or of any similar state law. Contractor agrees that if in the performance of its duties it does obtain such access it shall refrain from any removal, use or disclosure to any third person of such information and records and shall take any and all necessary affirmative steps to maintain the confidentiality, and avoid such removal, use or disclosure, whether intentional or inadvertent, of such records and information.
- C.** CONTRACTOR shall indemnify, defend and hold the DISTRICT, its Board of Trustees, officers, agents and employees harmless from any and all claims, damages, losses, causes of action and demands, including reasonable attorney's fees and costs, incurred in connection with or in any manner arising out of CONTRACTOR'S performance of the work contemplated by this Agreement. Acceptance of this Agreement constitutes that the CONTRACTOR is not covered under the DISTRICT'S general liability insurance, employee benefits or worker's compensation. It further establishes that the CONTRACTOR shall be fully responsible for such coverage.
- D.** The CONTRACTOR shall assume all expenses incurred in connection with the performance of this contract and the DISTRICT shall not be responsible for payment of any other expenses. The payment terms specified in Paragraph 4 above, unless otherwise indicated and agreed to in writing by the CONTRACTOR and the DISTRICT, shall be the only obligation of the DISTRICT. While engaged in carrying out and complying with any of the terms and conditions of this Agreement, CONTRACTOR is not entitled to any right or privilege applicable to an officer or employee of the DISTRICT or of the State of California.
- E.** Any system or documents developed, produced or provided under this contract, including any intellectual property discovered or developed by contractor in the course of performing or otherwise as a result of its work, shall become the sole property of the District unless explicitly stated otherwise in this contract
- F.** Payments to the CONTRACTOR pursuant to this Agreement will be reported to Federal and State taxing authorities as required. DISTRICT will not withhold any sums from compensation payable to CONTRACTOR. CONTRACTOR is independently responsible for the payment of all applicable taxes. An IRS form 1099 will be provided to the CONTRACTOR at the end of the calendar year.
- G.** Payment Of Prevailing Wages: Except for projects of \$1000 or less, if CONTRACTOR provides public project services such as carpet laying or building construction, alteration, demolition or repair CONTRACTOR shall pay all workers on the District project the prevailing wage pursuant to the California Labor Code, Sections 1770 through 1777.7. A copy of the prevailing wage rate determination available online at [www.dir.ca.gov/dlsr/statistics\\_research.html](http://www.dir.ca.gov/dlsr/statistics_research.html). The determination is issued by the California Department of Industrial Relations.
- H.** This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations of warranties, expressed or implied, not specified in this Agreement. This Agreement applies only to the current proposal as attached. Modification or termination of this contract requires mutual agreement by both parties.
- I.** Upon mutual agreement in writing or the parties hereto, this Agreement may be terminated at any time for any reason.
- J.** The parties to the Agreement, under penalty of perjury, hereby certify that all of the above items and attachments are to the best of their knowledge true and correct statements.

AGREEMENT OF CONTRACTOR: I agree to perform the services described above for the payment indicated. I understand that while performing contract services I am not an employee of the Foothill-De Anza Community College District because I follow an independent trade or profession, and will not be subject to control and direction as to the details and means for accomplishing the anticipated result of my service.

  
Contractor

  
Date

APPROVED:

This document certifies that I and my assigns have reviewed the appropriate legal and procedural guidelines pertinent to determination of independent contractor status, including IRS Revenue Ruling 87-41, have analyzed their application to the position described on the accompanying documents, and have concluded that the hiring of the subject individual to perform the functions described does indeed constitute correct and legal independent contractor status.

  
Authorized College District Requestor/Budgeter

  
Date

  
College/District Employee with Authority to Sign Contract

  
Date

Date Approved by Board of Trustees.

[Required prior to commencement of services if the total cost exceeds \$20,000.]



# Produce Install & Maintain Advertising Contract

(USA TRANSIT)

Contract No. - E1839538

5551 Corporate Blvd.  
Baton Rouge, LA 70808  
Phone - 800.235.2627 Fax - 225.923.0658

Date 6/25/12

☒ **New** ☐ **Renewal:** Previous Contract No  
(see provision # 3 on reverse side hereof)

Advertiser/Agency Agrees to purchase the following:

**Produce and Install:** The Lamar Companies ("Lamar") agrees to produce and install the below described transit advertising display(s) (hereinafter called the "Display"), in conformity with the specifications and conditions set forth herein. Advertiser or Advertising Agency agrees to pay the billing rate indicated below for the four (4) week periods specified. The term of this contract shall begin upon commencement of installation of the Display; installation may take up to five working days. Rate includes original basic copy only. In addition, Advertiser or Advertising Agency agrees to pay all taxes applicable to this contract. Additional charges will apply as approved by Advertiser or Advertising Agency. Title to Display passes to Advertiser upon installation of Display.

**Space and Maintenance:** The Lamar Companies ("Lamar") further agrees to provide space and maintain the Display in conformity with the specifications and conditions set forth herein.

Advertiser or Advertising Agency acknowledges that all representations and all agreements not herein set forth in writing are deemed waived. This contract shall not be binding upon Lamar until executed by an Officer or designee of Lamar. This Transit Advertising Display Contract is subordinate to the contract between the relevant transit Authority and Lamar.

☐ **Annual** - Upon commencement of installation, Advertiser or Advertising Agency agrees to pay the rate of billing described below per four (4) week period, in advance for 13 consecutive billing periods (52 weeks).

MARKET	DISPLAY TYPE	QUANTITY	BILLING RATE
			\$
			\$

☒ **Other** - The term of this contract shall begin as described below. Advertiser or advertising agency agrees to pay the rate of billing described below per designated four (4) week period, in advance.

MARKET	DISPLAY TYPE	DISPLAY SIZE	QUANTITY	TERM	BILLING RATE
VTA	Fullbacks	7' x 9'	50	From 3/4/13 To 3/31/13	\$ 36,250.00
VTA	Fullbacks	7' x 9'	50	From 4/1/13 To 4/14/13	\$ 18,125.00
VTA	Kings	30 x 144	50	From 3/4/13 To 3/31/13	\$ 23,750.00
VTA	Kings	30 x 144	50	From 4/1/13 To 4/14/13	\$ 11,875.00
				From To	\$
				From To	\$
				From To	\$
				From To	\$

☐ **Additional Services** Such as: Embellishments/Extensions/Snipes/Copy Changes. Please set out in detail additional charges and how these charges should be invoiced.

☐ Advertiser or Advertising Agency will pay \$ \_\_\_\_\_ for additional services: ☐ upon first billing OR ☐ over contract term.

Applicable sales and use taxes will be added.

This Advertising Display Contract is expressly subject to the additional terms and conditions set out on the reverse side hereof, and Advertiser/Advertising Agency acknowledges full review and acceptance of all written terms and conditions set out on both sides of this contract.

LAMAR MEDIA SALES  
REPRESENTATIVE: Kim Hancher  
(PRINT NAME OF SALES REPRESENTATIVE)

ADVERTISER: De Anza College  
(PRINT NAME OF ADVERTISER)

ACCEPTED BY: Casey Sexton-Gm  
(PRINT NAME AND TITLE OF LAMAR COMPANIES OFFICER/DESIGNEE)

ADVERTISING  
AGENCY: N/A  
(PRINT NAME OF ADVERTISING AGENCY)

AUTHORIZED  
REPRESENTATIVE: Marisa Spatafore Dir Of Mktg Development  
(PRINT NAME AND TITLE OF AUTHORIZED REPRESENTATIVE)

SIGNATURE DATE

SIGNATURE DATE

SHIP DISPLAY  
MATERIALS TO:

(ALL SHIPMENTS MUST BE PREPAID)

(NAME)

(MAILING ADDRESS)

(CITY, STATE, ZIP)

BILLING  
ADDRESS:

De Anza College- Lois Jenkins

(NAME - ATTENTION TO)

21250 Stevens Creek Blvd.

(MAILING ADDRESS)

Cupertino, Ca 95014

(CITY, STATE, ZIP)

PHONE NUMBER: 408-864-8948

FAX NUMBER: 408-864-5600

E-MAIL ADDRESS: Jenkinslois@Deanza.Edu

Taxpayer ID Number 93-0966515

(rev 06-03)

*Lois Jenkins*  
V.P. Finance + Ed Resources  
12/3/12



## Additional Terms and Conditions of Advertising Display Contract

1. The terms "Advertiser" and "Advertising Agency" shall mean and refer to the firms or individuals so designated on the face page of this contract, and "Advertiser" shall include the contracting Advertising Agency, if any. "Lamar" shall mean and refer to The Lamar Companies, its successors and assigns and any affiliated company having a contract with the Authority. "Authority" shall mean and refer to the public agency or authority having jurisdiction over the public transit vehicles and facilities on which the advertising materials are to be displayed.
2. Advertiser and/or Advertising Agency must provide approved artwork in an acceptable format 21 days prior to contract start date. If production is delayed due to artwork, Advertiser or Advertising Agency remains responsible for payment of contracted amount per contract period(s).
3. If this contract is a renewal contract, Advertiser or Advertising Agency agree to pay the billing rate set out in the previous contract for billing periods extending beyond the expiration of the previous contract term until the start date set out in this contract.
4. The text and illustrations on each Display shall be subject to approval or disapproval by Lamar and by each Authority on whose units the Display will be posted and such decision shall be final. In the event the Authority or its representatives shall disapprove of any Display, Lamar shall have the right to remove the Display forthwith and the Advertiser or Advertising Agency shall receive a pro rata credit (space only) from the date of removal of the Display.
5. Lamar accepts this contract subject to all federal, state and municipal laws and regulations with respect to the advertising matter to be displayed ("Laws"). In the event that such advertising Display becomes illegal or a request is received to terminate the Display for violation of Laws, Lamar reserves the right to terminate same, but there shall be no short rate charge because of such termination.
6. Advertiser or Advertising Agency grants to Lamar for the term of this contract, and any renewal thereof by Advertiser or Advertising Agency, an irrevocable license to use the Display, such license to commence on completion of installation. Upon expiry of the license, Advertiser or Advertising Agency agrees that Lamar can dispose of the Display.
7. It is understood and agreed that this contract may not be canceled by Advertiser or Advertising Agency without prior written consent of an Officer of Lamar. Lamar reserves the right to cancel this contract at any time upon default by the Advertiser or Advertising Agency in the payment of bills or other breach, or in the event of any material violation on the part of the Advertiser or Advertising Agency of any of the conditions herein contained; and upon such cancellation, all unpaid charges for advertising done hereunder, including short term rates or other charges under this contract shall become immediately due and payable. In case of delinquency in payment, waiver by Lamar of any specific breach of this contract by the Advertiser or Advertising Agency shall not prejudice Lamar's rights hereunder with respect to any breach or breaches not specifically waived by Lamar.
8. Execution of this contract does not constitute an extension of credit by Lamar to Advertiser or Advertising Agency. In the event Advertiser or Advertising Agency applies for credit, the terms, representations and conditions of the credit application are incorporated into this agreement. Upon credit approval by Lamar, all payments under this contract will be due in advance every four weeks. A late payment charge of 1.5% per month (18% per annum), or the maximum amount allowed by law, whichever is less, shall be charged to and paid by Advertiser or Advertising Agency on any amount remaining unpaid after 30 days from a given invoice date. Advertiser or Advertising Agency agrees to pay all taxes applicable to this contract. In addition, Advertiser acknowledges and agrees that no payment made to the Advertising Agency shall constitute satisfaction of a payment obligation under this contract unless and until Lamar actually receives said payment.
9. If this contract is placed with a collection agency or an attorney for collection, Advertiser or Advertising Agency shall pay Lamar's collection fees and reasonable attorney fees, even though no suit or action is filed. If a suit or action is filed, the amount of such reasonable attorney fees shall be fixed by the court or courts in which the suit or action, including any appeal therein, is tried, heard or decided, and shall include an amount estimated by the court as the reasonable costs and fees to be incurred in collecting any monetary judgment or enforcing any other order entered in the suit or action.
10. Failure to make any payment as herein provided shall, at Lamar's option, be deemed a complete and fundamental breach by Advertiser or Advertising Agency of this contract, and upon any such failure the full amount of the remaining installments shall immediately become due and payable, and in the event of failure to make payment thereof on demand, Lamar is authorized, but not obligated, to remove the Display from any or all of the spaces covered by this contract, to relet the spaces or any of them for the whole or any part of the unexpired term of this contract to such person or persons and upon such terms and conditions as Lamar may determine, to collect and receive the income or rent therefrom, to apply the income or rent so received from such reletting, first to Lamar's costs of replacing the Display (including, but not limited to, costs incurred for production and installation of the replacement display), and to apply the balance thereof to satisfaction of any amounts which may then be due to Lamar from Advertiser or Advertising Agency under this contract.
11. Advertiser or Advertising Agency shall indemnify and save harmless Lamar against any liability to which Lamar may be subjected by reason of the advertising material displayed under this contract, including, but not limited to, liability for infringement of trademarks, trade names, copyrights, invasion of rights of privacy, defamation, illegal competition or trade practices, as well as all reasonable costs, including attorney's fees, in defending any such action or actions.
12. Lamar will not be deemed to be in default with respect to its performance of or compliance with any of the terms or conditions of this advertising display contract if the failure to perform or comply is due to any act of God, armed conflict, riots, civil commotion, sabotage, vandalism, strikes or lockouts or any other event or cause, whether similar or dissimilar to the foregoing, beyond the control of Lamar.
13. This contract is not assignable by the Advertiser or Advertising Agency.
14. Any bill rendered to the Advertiser or Advertising Agency shall be conclusive as to the correctness of the items therein set forth and shall constitute an account stated unless written objection is made thereto by the Advertiser or Advertising Agency within thirty (30) days after billing.
15. Advertiser and Advertising Agency, if any, are jointly and severally responsible for payment under this contract. This contract contains the entire agreement between parties, and no representation or promise not set forth herein shall affect the obligations of the parties hereunder.
16. The Advertising Agency, if any, represents and warrants that it is authorized to execute this contract on behalf of the Advertiser and to legally bind the Advertiser to the payment and performance of the obligations provided in this contract.
17. Advertiser and Advertising Agency agree that Lamar makes no express or implied promise or commitment that Display will be posted on any specific unit or that Display will be posted on a unit that travels on any specific route.
18. Advertiser warrants that all approved designs do not infringe upon any trademark or copyright, state or federal. Advertiser agrees to defend, indemnify and hold Lamar free and harmless from any and all loss, liability, claims and demands, including attorney's fees arising out of the character, contents or subject matter, including but not limited to any claims for false or misleading advertising, of any copy displayed pursuant to this contract.

Customer Signature

12/03/12 Contract Number

*Letto Garapierin*  
V. P. Finance + Ed Ro

12/03/12

**Request for Taxpayer  
Identification Number and Certification**

Give form to the  
requester. Do not  
send to the IRS.

Print or type  
See Specific Instructions on page 2.

Name (as shown on your income tax return)

**LAMAR TEXAS LIMITED PARTNERSHIP**

Business name, if different from above

**THE LAMAR COMPANIES**

Check appropriate box: ☐ Individual/Sole proprietor ☐ Corporation ☒ Partnership  
☒ Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ .....  
☐ Other (see instructions) ▶

☐ Exempt  
payee

Address (number, street, and apt. or suite no.)

**P O BOX 96030**

City, state, and ZIP code

**BATON ROUGE, LA 70896**

List account number(s) here (optional)

Requester's name and address (optional)

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

or

Employer identification number

**72 1309005**

**Part II Certification**

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign  
Here

Signature of  
U.S. person ▶

*Yvette Boul*

Date ▶

*5/6/09*

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Purpose of Form**

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,