



**BOARD OF SUPERVISORS AGENDA ITEM REPORT
AWARDS / CONTRACTS / GRANTS**

___ Award ☒ Contract ___ Grant

Requested Board Meeting Date: 11/01/2022
or Procurement Director Award: No

Contractor/Vendor Name/Grantor (DBA):

City of Tucson

Project Title/Description:

Intergovernmental Agreement for Downtown Tucson Partnership Pilot Project.

Purpose:

This IGA establishes a mechanism for City of Tucson to share in the funding of the escort/transport service Pilot Program. Pilot Program will provide a minimum of four uniformed safety ambassadors, operating on foot or via electric carts, as escort and security services for County and City employees working in the Downtown Business Improvement District, from downtown government office buildings to downtown parking garages during evening and after dark hours. When not providing escort/transport services, DTP safety ambassadors will patrol the Downtown Business District and deliver enhance security throughout the area. City of Tucson agrees to split the cost of the Pilot Program with County.

Procurement Method:

Exempt Per Section 11.04.020.

Program Goals/Predicted Outcomes:

Split funding with City of Tucson to support Pilot Program to provide a minimum of four uniformed safety ambassadors, operating on foot or via electric carts, as escort and security services for County and City employees working in the Downtown Business Improvement District, from downtown government office buildings to downtown parking garages during evening and after dark hours. When not providing escort/transport services, DTP safety ambassadors will patrol the Downtown Business District and deliver enhance security throughout the area.

Public Benefit:

Significant increase in security within the Business Improvement District during the hours of 2pm through 10pm Monday-Friday. DTP security ambassadors will provide transport and escort services between downtown government buildings and parking garages. Security presence will make a safer downtown and help to increase economic activities in the Business Improvement District by providing a safer community environment.

Metrics Available to Measure Performance:

Safer streets. Increase public participation in downtown activities.

Retroactive: Yes. PCAO review process for companion DTP Operating agreement took longer than expected due to contract processing changes.

TO: COB 10/19/2021
Vers.: 1
pgs: 21

OCT19'22AM0915PO

Contract / Award Information

Document Type: CTN Department Code: FM Document Number: 23-058

Commencement Date: 10/01/2022 Termination Date: 12/31/2023 Prior Contract Number.(Synergen/CMS): n/a

Expense?: No Expense Amount \$: _____ Revenue?: Yes Revenue Amount \$: 117,500.00

Funding Source(s) required: City of Tucson

Funding from General Fund? No

Contract is fully or partly funded with Federal Funds? No

Were Insurance or Indemnity Clauses modified? No *If Yes attach Risk's approval*

Vendor is using a Social Security Number? No *If Yes, attach the required form per Administrative Procedure 22-10*

Amendment / Revised Award Information

Document Type: _____ Department Code: _____ Document Number: _____

Amendment Number: _____ AMS Version: _____ Prior Contract Number.(Synergen/CMS): _____

Commencement Date: _____ Termination Date: _____

___Expense ___Revenue ___Increase ___Decrease Amount This Amendment: _____

Is there Revenue Included? ___ If Yes, _____

Funding Source(s) required: _____

Funding from General Fund? ___ If Yes, \$ _____

Grant / Amendment Information *(For grants acceptance and awards)* X Award X Amendment

Document Type: _____ Department Code: _____ Grant Number: Document Number: _____

Commencement Date: _____ Termination Date: _____ Amendment Number: _____

___ Match Amount: \$ _____ ___ Revenue Amount: _____

All Funding Source(s) required:

Matching Funding from General Fund? _____ If Yes, \$ _____ %: Percent _____

Matching Funding from Other Sources? YES If Yes, \$ _____ %: Percent _____

Funding Source(s) required:

If Federal Funds are received, is funding coming directly from the Federal Government or passed through other organization(s)?

Contact: Kevin Button

Phone: 520-724-8230

Department: Facilities Management

Department Director Signature: _____

Date: 10/17/2022

Deputy County Administrator Signature: _____

Date: 10/17/2022

County Administrator Signature: _____

Date: 10/18/2022

Pima County Department of Facilities Management

Project: Intergovernmental Agreement for Downtown Tucson Partnership Pilot Project

Contractor: City of Tucson

Amount: \$117,500.00

Contract No.: CTN-FM-23-058

Funding: City of Tucson

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement ("IGA") is entered into by and between City of Tucson ("City"), and PIMA COUNTY, a political subdivision of the State of Arizona ("County"). When referred to together herein (the "Parties") pursuant to A.R.S. § 11-952.

1. Background and Purpose.

- 1.1.** DTP was created in 1998 to implement enhanced municipal services for the Downtown Business Improvement District (BID). These services include clean and safe initiatives, beautification, marketing, promotion, advocacy, relationship building and economic development initiatives.
- 1.2.** City of Tucson and County have a significant concentration of employees working in City and County buildings located in downtown area. These employees, during the day and after dark, utilize a number of parking garages located downtown within the Downtown Business Improvement District when traveling to and from work.
- 1.3.** City and County share a common interest in enhancing efforts to make the vibrant and growing Downtown Business Improvement District a cleaner, safer and more welcoming environment for everyone. In an effort to enhance safety and security during evening and after dark hours, Downtown Tucson Partnership ("DTP") proposed a pilot program whereby uniformed DTP safety ambassadors escort and transport government employees from downtown office buildings to parking garages on foot or via electric carts during evening and after dark hours ("Pilot Program").

- 1.4. County has entered into an Operating Agreement with DTP (shown in **Exhibit A** and incorporated herein by reference) to establish the Pilot Program. The City of Tucson wishes to provide 50% of the funding for the Pilot Program.

Therefore, this IGA sets forth the fiscal responsibilities of Parties in relation to the Pilot Program.

2. **Financing.**

- 2.1. **Payment to DTP.** Per section 10.10 of Operating Agreement (known internally to County as contract number CTN-FM-23-049) between DTP and County, County will receive a monthly invoice from DTP for the actual costs of operations and equipment to implement the Pilot Program. County will pay to DTP, within 30 days of receipt of invoice, 100% of the amount invoiced.
- 2.2. **County invoice to City.** Subsequently, upon issuance of payment to DTP, County will invoice City of Tucson for half (50%) of the monthly invoice for Pilot Program. County's invoice to City will include a copy of DTP invoice to County. Within 30 days of receipt of invoice from County, City of Tucson will pay County.
3. **Term of IGA.** The initial term of this IGA will be for a period (the "**Initial Term**") beginning on 10/01/2022 (the "**Commencement Date**") and ending on 12/31/2023 (the "**Termination Date**").
4. **Effective Date.** Regardless of the date that the Parties approve and execute this IGA, it will be deemed to be effective as of October 1, 2022 ("**Effective Date**").
5. **Extension Term.** This IGA may be extended for two additional 1-year periods ("**Extension Term**"). After the Initial Term, if the Pilot Program is extended per section 3 of the Operating Agreement, County will notify City of the extension and prepare and deliver to City an amendment ("**Amendment**") to reflect any mutually agreed upon changes in Term and other terms and conditions, and City will execute and return the Amendment to County within 15 days after City's receipt of Amendment. If no changes are mutually agreed upon, the terms and conditions of this IGA, except for the ending date of the Term, will remain the same during all Extension Terms.
6. **Termination.** City or County may terminate this IGA upon not less than 180 days written notice to the other Party.
7. **Payment of Invoices.** Payment must be delivered to Pima County Government, Finance-Revenue Management Division, 33 N. Stone, 6th floor, Mail Stop DT-BAB6-404, Tucson, Arizona 85701. City will pay 9% per annum simple interest on any late Invoice payment that is not paid when due, from the date due until paid.

9. **Indemnification.** Each party (as Indemnitor) agrees to indemnify, defend and hold harmless the other party (as Indemnitee) from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") for bodily injury of any person (including death) or property damage, but only to the extent that such injury or damage is caused or alleged to be caused by a negligent or intentionally wrongful act or omission of the Indemnitor, or of any of its officers, officials, agents, employees, or volunteers.
10. **Insurance.** Each party warrants that it is self-insured or otherwise maintains adequate insurance to fully cover its liability under this IGA.
11. **Remedies.** Either party may pursue any remedies provided by law and in equity for the breach of this Lease, including termination of the Lease.
12. **Notices.** All notices to be given under this IGA will be in writing and will be either served personally or sent by certified or registered mail, return receipt requested, electronic transmission or fax, to the parties as indicated below or to such other persons, or addressees as either party may designate in writing to the other party:

City : City of Tucson
Email:

COUNTY: Clerk of the Board of Supervisors
130 W. Congress St.
Tucson, Arizona 85701

With a copy to:

Director, Facilities Management
150 W. Congress St, 3rd floor
Tucson, Arizona 85701
Email: FM_Leasing_Services@pima.gov

13. **Receipt of Notice.** Any notice given as indicated in section 30 will be deemed to have been given on the date of receipt, or if delivery is refused, on the date of such refusal.
14. **Arbitration.** The parties agree that any dispute arising under this IGA involving the sum of fifty thousand (\$50,000) or less in money damages only shall be resolved by arbitration pursuant to the Arizona Uniform Rules of Procedure for Arbitration. The decision of the arbitrator(s) shall be final.

15. **Non-appropriation.** The parties recognize that the performance by Parties may be dependent upon the appropriation of funds by the State Legislature of Arizona, the Board of Supervisors of the County, or the availability of funding from other sources. Should the relevant governing body fail to appropriate the necessary funds, if either party's appropriation is reduced during the fiscal year, or if funding becomes otherwise not legally available to a party hereunder, that party may reduce the scope of this IGA if appropriate or cancel the IGA without further duty or obligation. Each party agrees to notify the other party as soon as reasonably possible after the unavailability of said funds comes to the Board's attention.
16. **American with Disabilities Act.** Both parties will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and applicable federal regulations under the Act as it pertains to the Building and use of the Premises. This will not obligate County to make any modifications to the Building or Premises, as a result of any change in the law or regulations, if such repairs are not otherwise legally required.
17. **Non-Discrimination.** The Parties will comply with all applicable state and federal statutes, regulations and executive orders governing equal employment opportunity, non-discrimination, and immigration.
18. **Conflict of Interest.** This IGA is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated herein by reference.
19. **Law to Govern.** This IGA is made under and will be interpreted according to Arizona law. Any action relating to this IGA will be brought in a court of the State of Arizona in Pima County.
20. **Compliance with Laws.** The parties will comply with all applicable federal, state and local laws, rules, regulations, standards, Executive Orders, and with any applicable Pima County Board of Supervisors' policies.
21. **No Joint Venture.** It is not intended by this IGA to, and nothing contained in this IGA will be construed to, create any partnership, joint venture or employment relationship between the parties or create any employer-employee relationship between a party and the employees of the other party. Neither party will be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for itself or any of its employees.
22. **No Third-Party Beneficiaries.** Nothing in this IGA is intended to create duties or obligations to or rights in third parties not parties to this IGA or affect the legal liability of either party to the IGA by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.

23. **Amendment.** This IGA may only be modified, amended, altered or changed by written agreement signed by the parties.
24. **Severability.** If any provision of this IGA, or any application of a provision to the parties or any person or circumstance, is found by a court to be invalid, that invalidity will not affect other provisions or applications of this IGA that can be given effect without the invalid provision or application.
25. **Legal Authority.** Neither party warrants to the other its legal authority to enter into this IGA. If a court, at the request of a third person, should declare that either party lacks authority to enter into this IGA, or any part of it, then the IGA, or parts of it affected by such order, will be null and void, and no recovery may be had by either party against the other for lack of performance or otherwise.
26. **Entire Agreement.** This document, and any exhibits attached to it, constitutes the entire agreement between the parties pertaining to the subject matter addressed, and all prior or contemporaneous agreements and understandings, oral or written, are superseded and merged into this IGA. This IGA may not be modified, amended, altered or extended except through a written amendment signed by the parties.

REMAINDER OF PAGE INTENTIONALLY BLANK

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day, month and year written below.

PIMA COUNTY, ARIZONA

City of Tucson

By: _____

Sharon Bronson
Chair, Board of Supervisors

By: _____

Authorized Signer

Date: _____

Date: _____

ATTEST:

By: _____

Melissa Manriquez
Clerk of the Board of Supervisors

APPROVED AS TO CONTENT:

By:  _____

Lisa Josker, Director
Pima County Facilities Management

Date: 10/17/2022

APPROVED AS TO FORM:

By:  _____

Kyle Johnson
Deputy County Attorney

Date: 10/17/2022

Exhibit A
DTP Operating Agreement

Pima County Department of Facilities Management

Project: Operating agreement with Downtown Tucson Partnership for Transportation and Security

Contractor: Downtown Tucson Partnership, Inc.

Amount: \$235,000.00

Contract No.: CT-FM-23-174

OPERATING AGREEMENT

1. **Parties.** This operating agreement ("**Agreement**") is made and entered into between Pima County, a political subdivision of the State of Arizona ("**County**") and the Downtown Tucson Partnership, Inc., an Arizona non-profit 501(c)(6) corporation ("**DTP**"). County and DTP are each individually a "**Party**" and collectively the "**Parties**."
2. **Authority.** County selected DTP pursuant to and consistent with Board of Supervisors Policy D29.4.
3. **Background and Purpose.**
 - 3.1. DTP was created in 1998 to implement enhanced municipal services for the Downtown Business Improvement District (BID). These services include clean and safe initiatives, beautification, marketing, promotion, advocacy, relationship building and economic development initiatives.
 - 3.2. County has a significant concentration of employees working in County buildings located in downtown area. These employees, during the day and after dark, utilize a number of parking garages located downtown within the Downtown Business Improvement District when traveling to and from work.
 - 3.3. DTP and County share a common interest in enhancing the effort to make the vibrant and growing Downtown Business Improvement District a cleaner, safer and more welcoming environment for everyone. In an effort to enhance safety and security during evening and after dark hours, DTP proposes a pilot program whereby uniformed DTP safety ambassadors escort and transport government employees from downtown office buildings to parking garages on foot or via electric carts during evening and after dark hours ("**Pilot Program**").
 - 3.4. This agreement is intended to reflect the Parties' roles, mutual goals and objectives, and the Parties' respective financial and non-financial commitments to the Pilot Program.

Consistent with the above recitals, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

4. Term.

- 4.1. Initial Term.** The initial term ("**Initial Term**") of this Agreement will begin on October 1, 2022 (the "**Commencement Date**") and end on the December 31, 2023 (the "**Expiration Date**").
- 4.2. Effective Date.** Regardless of the date that the Parties approve and execute this Agreement, it will be deemed to be effective as of October 1, 2022.
- 4.3. Option to Extend.** If DTP is not in default under the Agreement, and County agrees to continue the program, DTP may extend the Initial Term of the Agreement for up to two additional 1-year periods (each, an "**Extension Term**"), by providing written notice to County of DTP's desire to exercise option to extend, not more than 9 months nor less than 6 months prior to end of the Initial Term or the prior Extension Term, as applicable. "Term" means the Initial Term and any Extension Term(s) exercised by DTP.
- 4.4.** If DTP properly exercises an option to extend the Term, and County agrees to continue the program, County will prepare an amendment (the "**Amendment**") to reflect any mutually agreed upon changes in fees, Term, Expiration Date and other appropriate terms and conditions, and DTP will execute and return the Amendment to County within 15 days after DTP's receipt of Amendment. If no changes are mutually agreed upon, the terms and conditions of the Agreement, except for the ending date of the Term, will remain the same during all Extension Terms.

- 4. Description of Services.** DTP agrees to provide, a minimum of four uniformed safety ambassadors, operating on foot or via electric carts, escort and security services for County employees working in the Downtown Business Improvement District, from downtown government office buildings to downtown parking garages during evening and after dark hours. When not providing escort/transport services, DTP safety ambassadors will patrol the Downtown Business District and deliver additional security throughout the area ("**Service**").
- 5. Service Hours.** DTP will provide Service, between the hours of 2 p.m. thorough 10 p.m., Monday through Friday, excluding holidays.
- 6. Service Area for Operations.** Service will operate within the Downtown Business Improvement District, see attached **Exhibit A**.
- 7. Equipment.** DTP estimates the need for three electric carts for Service provision startup (two, four-passenger carts and one six-passenger cart). Electric cart estimates include the cost of tax, title, license, liability insurance, vehicle insurance and DTP branding.
- 8. Personnel cost.** DTP estimates annual labor costs for each uniformed safety ambassador to be \$50,000. This amount reflects the rate per hour pay plus benefits and insurance. Pilot Program will employ four safety ambassadors.
- 9. Pilot Program Funding.** Funding for the Pilot Program for year one is not to exceed \$235,000, and will be provided by County. If the Pilot Program is extended, the estimated annual cost for years two and three is \$208,000 (see **Exhibit B**). County intends that City of Tucson will become an equal fiscal contributor to the Pilot Project, which through an increased security presence, will

benefit the entire community. County will enter into a separate Intergovernmental Agreement (“IGA”) with City of Tucson to fund 50% of the estimated cost of the Pilot Program.

10. Obligations of DTP.

- 10.1. Provision of Service by DTP.** DTP will be responsible for operations and management of the Pilot Program which will include, but not be limited to, cooperating with County to develop a simple request system, accessible online via cell phone or computer, or by calling directly, for Service users to use when requesting safe transport/escort, staffing, scheduling, equipment maintenance, BID enhanced security, accounting and reporting.
- 10.2. Timeframe for Initial Startup of Service.** Upon execution of this agreement, DTP will immediately begin the processes for startup of Service. This includes, but is not limited to, hiring of security personnel, development of request system, equipment acquisition, and all other duties and responsibilities outlined in section 10.1 above. No later than January 1, 2023 (“**Service Commencement Date**”), DTP will begin Pilot Program.
- 10.3. Expenses of DTP.** With the exception of funds contributed by third party or otherwise provided by County, DTP will conduct all of its operations at its own expense.
- 10.4. Compliance with Laws.** DTP will comply with all applicable federal, state, and local laws, statutes, ordinances, rules, regulations, standards, policies, and executive orders with respect to its operations in the Premises.
- 10.5. Not for Profit.** Nothing in this Agreement implies permission to conduct any for-profit business, proof thereof, may be cause for termination of this Agreement. Advertisements, signs, brochures, and promotional material will not misrepresent in any way the services provided.
- 10.6. Licensure/Permits.** DTP will apply for and obtain any license, registration or permit which will be required during the Term of this Agreement by the State of Arizona or any other governmental or regulatory authority and will maintain such license, registration or permit in good standing throughout the Term of this Agreement. DTP will immediately notify County in writing if the license, registration or permit is denied or terminated. In the event of such denial or termination County may, in its sole discretion, terminate this Agreement with no further obligation to DTP.
- 10.7. Taxes.** DTP will be responsible for all taxes, if any, related to this Agreement
- 10.8. Donations.** Should DTP raise any donations or secure state or federal grant funds in relation to this Pilot Program, those funds will be used exclusively by DTP for specific equipment and personnel costs associated with this Pilot Program and the provision of Service and for no other purpose.
- 10.9. Equipment Repair and Maintenance.** DTP will maintain and repair, or cause to be maintained or repaired the carts associated with the delivery of Service. DTP will timely pay all contractors, subcontractors, mechanics, laborers, or materialmen providing materials or services with respect to the related Pilot Program equipment, and will not permit any lien to attach to the equipment.

10.10. Invoicing. Beginning November 1, 2022 and continuing on the first day of each month thereafter, during the Term, DTP will invoice County for actual cost of operations and equipment (described in Exhibit B) to implement the Pilot Program. County, within 30 days of receipt of invoice, will pay DTP. County must receive invoices no more than 30 days after the end of the billing period in which DTP delivered the invoiced products or services to County. County may refuse to pay for any product or service for which DTP does not timely invoice the County and, pursuant to A.R.S. § 11-622(C), will not pay for any product or service invoiced more than 6-months late.

10.11. Board Approval. This agreement is contingent upon approval of both Pima County Board of Supervisor approval and the DTP Board of Directors.

11. Insurance. DTP will procure and maintain at its own expense insurance policies (the “**Required Insurance**”) satisfying the below requirements (the “**Insurance Requirements**”) until all its obligations under this Agreement have been met. The below Insurance Requirements are minimum requirements for this Agreement and in no way limit DTP’s indemnity obligations under this Agreement. The County in no way warrants that the required insurance is sufficient to protect the DTP for liabilities that may arise from or relate to this Agreement. If necessary, DTP may obtain commercial umbrella or excess insurance to satisfy the Insurance Requirements.

11.1. Insurance Coverages and Limits: DTP will procure and maintain, until all its obligations have been discharged, coverage with limits of liability not less than those stated below. Coverage must be placed with insurers acceptable to the County with A.M. Best rating of not less than A-VII, unless otherwise approved by the County.

11.2. Commercial General Liability (CGL) – Occurrence Form with limits not less than \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy shall include coverage for liability arising from premises, operations, independent DTPs, personal injury, bodily injury, broad form contractual liability and products-completed operations. Any standard coverages excluded from the CGL policy, such as products/completed operations, etc. shall be covered by endorsement or separate policy and documented on the Certificates of Insurance.

11.3. Business Automobile Liability – Coverage for bodily injury and property damage on any owned, leased, hired, and/or non-owned autos assigned to or used in the performance of this Agreement with minimum limits not less than \$1,000,000 Each Accident.

11.4. Workers’ Compensation and Employers’ Liability – Statutory coverage for Workers’ Compensation. Workers’ Compensation statutory coverage is compulsory for employers of one or more employees. Employers Liability coverage with limits of \$1,000,000 each accident and \$1,000,000 each employee – disease.

11.5. Additional Insured: The General Liability and Business Automobile Liability Policies shall each be endorsed to include Pima County, its departments, districts, boards, commissions, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the DTP.

- 11.6. Subrogation: The General Liability, Business Automobile Liability and Workers' Compensation Policies shall each contain a waiver of subrogation endorsement in favor of Pima County, and its departments, districts, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the DTP
- 11.7. Additional Coverage Requirements:
- 11.7.1. Claims Made Coverage: If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Agreement, and DTP must maintain such coverage for a period of not less than three (3) years following Agreement expiration, termination or cancellation.
 - 11.7.2. Primary Insurance Endorsement: The Required Insurance policies must stipulate that they are primary and that any insurance carried by County, or its agents, officials, or employees, is excess and not contributory insurance.
 - 11.7.3. The Required Insurance policies may not obligate County to pay any portion of DTP's deductible or Self Insurance Retention (SIR).
 - 11.7.4. Injury Reports. By the 15th of each month, DTP will provide to County, Risk Management Department, 130 S. Congress, 6th Floor, Tucson, Arizona 85701 with a copy to Facilities Management whose address is provided in Section 16 of this Agreement, a report listing any incident involving injury to persons or damage to property occurring in the BID. If any such injury to persons requires emergency medical treatment, DTP will contact County within one (1) business day of such incident. County will have the right to investigate any incident involving injury to persons or property occurring and DTP will provide County with all information available to DTP about such incident.
 - 11.7.5. Insurance Certificates. DTP will provide County with current certificates of insurance which will show County as an additional insured where required. All certificates of insurance must provide for guaranteed thirty (30) days written notice of cancellation, non-renewal or material change.
 - 11.7.6. Waiver of Subrogation. Each party waives its claims and subrogation rights against the other for losses typically covered by property insurance coverage.
 - 11.7.7. Changes to Insurance Requirements. The Pima County Risk Manager may modify the Insurance Requirements at any point during the Term of this Contract. This can be done administratively, with written notice from the Risk Manager and does not require a formal Contract amendment. Neither the County's failure to obtain a required insurance certificate or endorsement, the County's failure to object to a non-complying insurance certificate or endorsement, nor the County's receipt of any other information from the DTP, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.

12. Accounting and Budget.

- 12.1. **Accounting.** DTP will maintain an accounting system that conforms to generally accepted accounting principles and accurately reflects the operation of the Pilot Program. Within 60 days of the end of DTP's fiscal year, DTP will submit to County Facilities Management Department an annual statement reflecting the income statement and balance sheet for the operation of the Pilot Program. DTP will keep and maintain complete books, records, and accounts, and the same will be opened for inspection and audit by duly authorized representatives of County at all reasonable times. The manner of record keeping will be subject to the approval of the Director of the Pima County Department of Finance and Risk Management.
- 12.2. **Budget.** Annually, not later than May 1 of each year, DTP will provide County its fiscal year (July 1-June 30) budget, that includes projected costs associated with managing and operating the Pilot Program for the upcoming calendar year.
13. **No Partnership.** DTP is and will remain a separate entity from County, and employees of DTP will not be County employees. DTP retains the ability and right to enter into agreements with other entities for the purpose of fulfilling its obligations under this or any other agreement, except that DTP may not assign or otherwise transfer its obligations under this Agreement.
14. **Indemnification.** To the fullest extent permitted by law, DTP will defend, indemnify, and hold harmless Pima County and any related taxing district, and the officials and employees of each of them (collectively, "**Indemnitee**") from and against any and all claims, actions, liabilities, losses, and expenses (including reasonable attorney fees) (collectively, "**Claims**") arising out of actual or alleged injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by any act or omission of DTP or any of DTP's directors, officers, agents, employees, volunteers, or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of DTP to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The Indemnitee will, in all instances, except for Claims arising solely from the acts or omissions of the Indemnitee, be indemnified by DTP from and against any and all Claims. DTP is responsible for primary loss investigation, defense and judgment costs for any Claim to which this indemnity applies. This indemnity will survive the expiration or termination of this Agreement.
15. **DEFAULT.** The occurrence of any one or more of the following events will constitute a default and breach of this Agreement by DTP for which County or DTP may immediately terminate this Agreement:
- 15.1. **Operation of Pilot Program.** The abandonment of the Pilot Program, or any portion thereof, by DTP, where such abandonment continues for a period of 10 calendar days after County sends notice of such default to DTP.
- 15.2. **Violation of Law.** Violation of any law by DTP, or the conduct of any unlawful activities that are permitted by DTP, either tacitly or explicitly, or which DTP has not taken reasonable means to prevent after DTP becomes or in the exercise of reasonable diligence should have become aware that such activities are being conducted.

15.3. **Health and Safety Violation.** Any action or omission by DTP that, in the County's reasonable judgment, causes a threat to the health or safety of the general public, which continues for a period of three days after written notice from County. DTP's failure to obtain and maintain any required license and/or registration for its operations at the Premises is considered a violation under this paragraph.

15.4. **Other Covenants.** The failure by DTP to observe or perform any other of the covenants, conditions or provisions of this Agreement to be observed or performed by DTP, where such failure continues for a period of 30 days after written notice thereof by County to DTP (unless the failure is of such a character as to require more than 30 days to cure, in which event DTP will be in default only if it fails to initiate the cure within thirty days, and thereafter diligently pursue the same to completion provided such cure is completed within 120 days of the notice by County).

15.5. **County Default.** County will be in default hereunder if County fails to perform any covenant or condition of this Agreement to be performed by County and such failure continues for 30 days after written notice and demand from DTP to County (unless the failure is of such a character as to require more than 30 days to cure, in which event County will be in default only if it fails to initiate the cure within thirty days, and thereafter diligently pursue the same to completion provided such cure is completed within 120 days of the notice by DTP).

15.6. **Remedies.** Either party may pursue any remedies provided by law and in equity for the breach of this Agreement, including termination of the Agreement under Section 23 of this Agreement.

16. **Notice.** Any notice required or permitted to be given under this Agreement will be in writing and will be served by personal delivery, United States mail service, email or electronic transmission, or certified mail upon the other party as follows:

County: Director, Pima County Facilities Management
 150 West Congress, 3rd Floor
 Tucson, AZ 85701
 Email: FM_Leasing_Services@pima.gov

DTP: Kathleen Eriksen, Chief Executive Officer
 Downtown Tucson Partnership
 100 N. Stone Suite 101
 Tucson, AZ 85701
 EMAIL: kathleeneriksen@downtowntucson.org

Any notice given as indicated in this Section will be deemed to have been given on the date of receipt, or if delivery is refused, on the date of such refusal.

17. Termination

17.1. By DTP. DTP may terminate this Agreement upon not less than 180 days written notice to County should it become economically unfeasible for DTP to continue operating the Pilot Program. Should DTP terminate this agreement, all equipment associated with this Service, will be immediately quit and surrendered to County, and DTP will relinquish any claim to same and County will have no other obligations under this agreement. Likewise, any unused funding will be refunded to County.

17.2. By County.

17.2.1. Without Cause. County may terminate this Contract at any time without cause by notifying DTP, in writing, at least 30 days before the effective date of the termination. In the event of such termination, County's only obligation to DTP will be payment for services rendered prior to the date of termination.

17.2.2. With Cause. County may terminate this Contract at any time without advance notice and without further obligation to County when County finds DTP to be in default of any provision of this Contract.

17.2.3. Non-Appropriation. Notwithstanding any other provision in this Contract, County may terminate this Contract if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining County or other public entity obligations under this Contract. In the event of such termination, County will have no further obligation to DTP, other than to pay for services rendered prior to termination.

18. Miscellaneous.

18.1. Severability. Each provision of this Agreement stands alone, and any provision of this Agreement found to be contrary to law will be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement.

18.2. Entire Agreement. This Agreement and the attachments constitute the entire agreement between the parties pertaining to the subject matter it addresses, and this Agreement supersedes all prior or contemporaneous agreements and understandings, oral or written.

18.3. Amendment. The parties may modify, amend, alter or extend this Agreement only by written amendment signed by both parties.

18.4. Survival. The parties' respective obligations to indemnify, defend and hold harmless each other as provided elsewhere in this Agreement shall survive the expiration of the term hereof and/or the termination of this Agreement.

- 18.5. Conflict of Interest. This Agreement is subject to cancellation for conflict of interest pursuant to ARS § 38-511, the pertinent provisions of which are incorporated into this Agreement by reference.
- 18.6. Waiver. The waiver of any term, condition, or covenant, or breach of any term, condition, will not constitute the waiver of any subsequent breach of any other term, condition, or covenant. The failure of either party to insist upon the complete performance of any of the terms and provisions of this Agreement to be performed on the part of the other, or to take any action permitted as a result thereof, will not constitute a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future.
- 18.7. Assignment. DTP may not assign its rights or obligations under this Contract, in whole or in part, without the County's prior written approval. County may withhold approval at its sole discretion. DTP will not use a Subcontractor to complete the Scope of Work in this Agreement.
- 18.8. Non-Discrimination. The parties will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this Agreement, including flow down of all provisions and requirements to any subcontractors. During the performance of this Agreement, neither party will discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.
- 18.9. Americans with Disabilities Act. DTP will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.
- 18.10. Authority to Contract. DTP warrants its right and power to enter into this Contract. If any court or administrative agency determines that County does not have authority to enter into this Contract, County will not be liable to DTP or any third party by reason of such determination or by reason of this Contract.
- 18.11. Remedies. Either party may pursue any remedies provided by law for the breach of this Contract. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.
- 18.12. Choice of Law. The laws of the State of Arizona will apply to any action relating to this Agreement and any court action will be brought in a court in Pima County, Arizona.

18.13. Legal Arizona Workers Act Compliance.

18.13.1. Compliance with Immigration Laws. DTP hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to its employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the “State and Federal Immigration Laws”). DTP will further ensure that each subcontractor who performs any work for DTP under this Contract likewise complies with the State and Federal Immigration Laws.

18.13.2. Books & Records. County has the right at any time to inspect the books and records of DTP and any subcontractor in order to verify such party’s compliance with the State and Federal Immigration Laws.

18.13.3. Remedies for Breach of Warranty. Any breach of DTP’s or any subcontractor’s warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Contract subjecting DTP to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, DTP will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion. Any additional costs attributable directly or indirectly to such remedial action are the responsibility of DTP.

18.14. Liens. DTP will timely pay all contractors, subcontractors, mechanics, laborers, or material men providing materials or services with respect to the Premises, and will not allow any lien to attach to the Premises or any interest therein, and will indemnify and defend County against all legal costs and charges resulting from any such lien.

18.15. Waiver of Claims Against County. Upon execution of this Agreement, DTP waives any and all rights or claims against County that existed prior to the execution of this Agreement by County.

18.16. Mediation. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there will be a 45 day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation. The matter in dispute will be submitted to a mediator mutually selected by County and DTP. In the event that the parties cannot agree upon the selection of a mediator within seven days, then within three days thereafter, County and DTP will request the presiding judge of the Superior Court in and for Pima County, State of Arizona, to appoint an independent mediator. The cost of any such mediation will be divided equally between County and DTP. The results of the mediation will be nonbinding on the parties, and any party will be free to initiate litigation subsequent to the moratorium.

18.17. Sustainability Plan. In accordance with County’s Sustainability Plan, DTP will use all reasonable efforts to save energy, use recycled products or re-use and recycle materials used in the operation of this Pilot Program and provision of Service.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day, month and year written below.

PIMA COUNTY

Sharon Bronson
Chair, Board of Supervisors

Date: _____

Downtown Tucson Partnership, Inc.

By: Kathleen Eiken
Authorized signer

Name: KATHLEEN ERIKSON

Title: CEO

Date: 10/17/22

ATTEST:

Melissa Manriquez, Clerk of Board

APPROVED AS TO CONTENT:

Lisa Josker
Director, Facilities Management

Date: _____

APPROVED AS TO FORM:

Kyle Johnson
Deputy County Attorney

Date: _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day, month and year written below.

PIMA COUNTY

Downtown Tucson Partnership, Inc.

Sharon Bronson
Chair, Board of Supervisors

By: _____
Authorized signer

Date: _____

Name: _____

Title: _____

Date: _____

ATTEST:

Melissa Manriquez, Clerk of Board

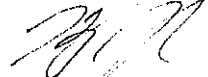
APPROVED AS TO CONTENT:



Lisa Josker
Director, Facilities Management

Date: 10/17/2022

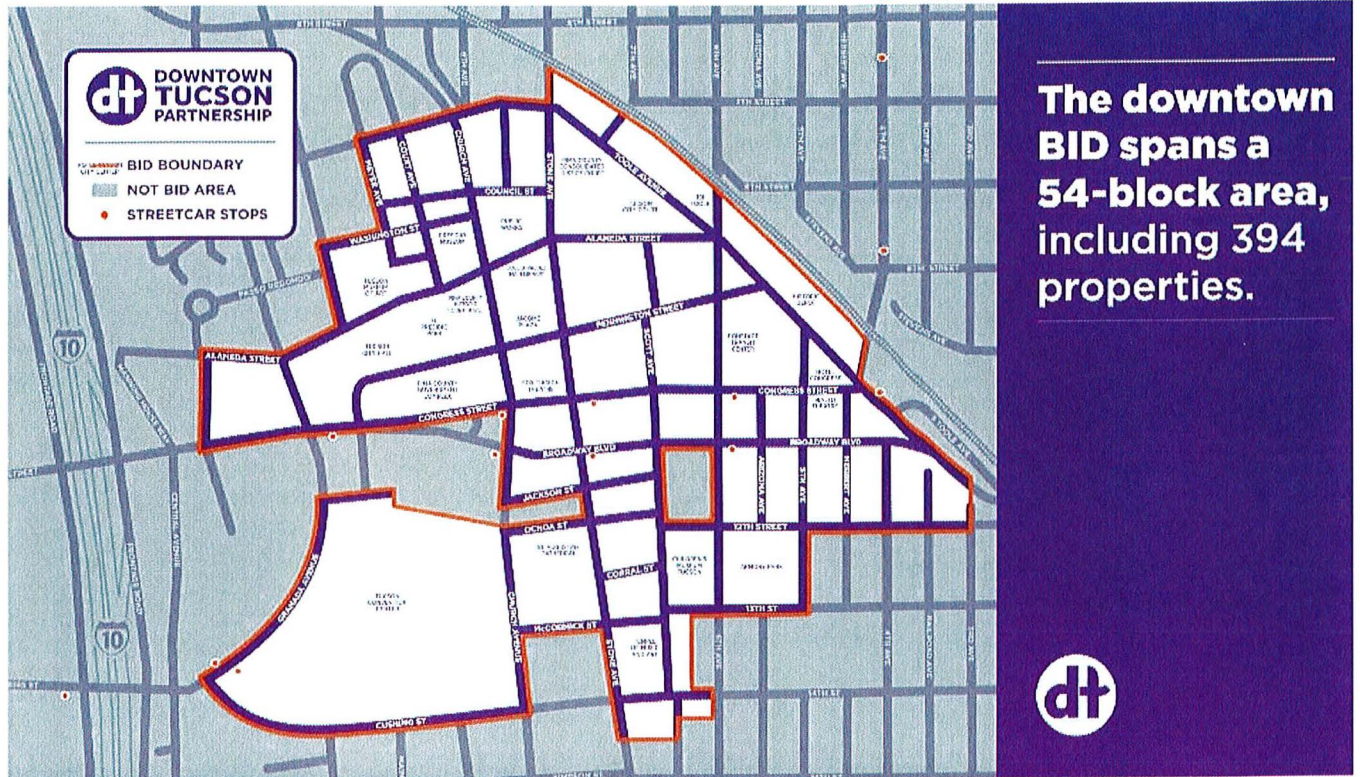
APPROVED AS TO FORM:



Kyle Johnson
Deputy County Attorney

Date: 10/17/2022

EXHIBIT A
Downtown Business Improvement District



**EXHIBIT B
Pilot Program Costs**

CONTRACT COST FOR YEAR ONE

<u>Item</u>	<u>Cost</u>	<u>#</u>	<u>Total</u>
Four Passenger Cart	\$10,400	2	\$ 20,800
Six Passenger Cart	\$14,200	1	\$ 14,200
Labor Cost	\$50,000	4	<u>\$ 200,000</u>
	Total:		\$ 235,000

CONTRACT COST FOR YEAR TWO AND THREE

<u>Item</u>	<u>Cost</u>	<u>#</u>	<u>Total</u>
Maintenance Cost:			
Four Passenger Cart (Tires, Batteries, Insurance)	\$ 2,600	2	\$ 5,200
Six Passenger Cart (Tires, Batteries, Insurance)	\$ 2,800	1	\$ 2,800
Labor Cost	\$50,000	4	<u>\$ 200,000</u>
	Total:		\$ 208,000
