

## Purchase Agreement # T20-032-01

This Agreement is entered into by the City of Tempe (hereinafter referred to as the “City”) and Dunn Transportation (hereinafter referred to as “Contractor”).

The parties agree as follows:

1. **Services:** The Contractor shall provide bus shuttling services to transport persons from the parking lot located on Hardy and Rio Salado to the Tempe Center of the Arts (TCA). The goal is to quickly, safely, and efficiently transport persons while the parking lot at the TCA is under construction.

The TCA anticipates bus shuttling services to run approximately an hour prior to the scheduled event through an anticipated hour past the event. The TCA will provide a list of scheduled events and the quantity of buses that will be required for the event.

The Contractor shall also provide ground crew to assist persons getting on and off the vehicle as well as acting as a parking attendant by directing traffic to the Hardy parking lot instead of parking in the TCA parking lot.

An image of the construction site and approximated drop off route is provided below.



2. **Price:** The City and Contractor agree to the following rates:

1. 34 passenger shuttle bus or trolley (weather permitting)	\$90 an hour with a three (3) hour minimum
2. 17 passenger ADA accessible bus	\$65 an hour with a three (3) hour minimum
3. Ground Crew	\$25 an hour, per person
3. **Term of Agreement:** The term of this Agreement shall commence on August 1, 2019 and shall expire one (1) year after the commencement date.
4. **Agreement Termination:** At any time during the life of the agreement, the City may issue a termination for convenience, without default, by providing a written 30-day notice of termination to the other party.
5. **Default Provisions:** The Contractor shall be deemed in default under this Agreement upon the occurrence of any of the following events:
  1. The Contractor provides material that does not meet the specifications of the Agreement and fails to cure such non-performance within 30 days (or sooner if deemed necessary by the City due to the circumstances of the default) after written notice from the City;

2. The Contractor fails to adequately perform the services set forth in the specifications of the Agreement and fails to cure such non-performance within 30 days (or sooner if deemed necessary by the City due to the circumstances of the default) after written notice from the City;
3. The Contractor fails to complete the work required or furnish the materials required within the time stipulated in the Agreement and fails to cure such non-performance within 30 days (or sooner if deemed necessary by the City due to the circumstances of the default) after written notice from the City;
4. The Contractor fails to make progress in the performance of the Agreement and/or gives the City reason to believe that the Contractor will not or cannot perform to the requirements of the Agreement and fails to cure such non-performance within 30 days (or sooner if deemed necessary by the City due to the circumstances of the default) after written notice from the City;
5. The Contractor fails to perform any other term or condition of this Agreement and fails to cure such non-performance within 30 days (or sooner if deemed necessary by the City due to the circumstances of the default) after written notice from the City.

In case of default, the City may terminate the Agreement, in whole or in part, and /or may resort to any other remedy as provided by law. The City may also perform any test or analysis on materials (equipment/products) for compliance with the specifications of the Agreement. The Contractor shall pay the actual expense of testing if the results of any test or analysis indicate a material non-compliance with the specifications.

**6. Applicable Law**

This agreement shall be governed by, and the City and Contractor shall have all remedies afforded each by the Uniform Commercial Code, as adopted in the State of Arizona, except as otherwise provided in this resultant agreement or in statutes or ordinances pertaining specifically to the City. This agreement shall be governed by State of Arizona law and suits pertaining to this agreement may only be brought in courts located in Maricopa County, Arizona.

**7. Insurance**

Prior to commencing services under this agreement, Contractor shall procure and maintain for the duration of the agreement insurance against claims for injuries (including death) to persons and damages to property, which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees, Subcontractors, or sub-Subcontractors. For bidders with self-insurance, proof of self-insurance with minimum limits expressed below must be submitted on proper forms for evaluation prior to award of agreement.

An Agreement Award Notice or Purchase Order will not be issued to an awarded vendor until receipt of all required insurance documents by the City Procurement Office and such documents must meet all requirements of this Insurance clause. In addition, before any agreement is renewed for additional time periods, all required insurance must be in force and on file with the City Procurement Office. An awarded vendor or Contractor must submit required insurance within 10 calendar days after request by the City Procurement Office or the award may be rescinded and another vendor selected for award.

**A. Minimum Limits of Insurance**

Contractor shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury and property damage, including coverage for contractual liability (including defense expense coverage for additional insureds), personal injury, broad form property damage, products and completed operations. The general aggregate limit shall apply separately to this project/location or the general aggregate shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage, including coverage for owned, hired, and non-owned vehicles as applicable.

3. Workers' Compensation and Employers Liability: Workers' Compensation and Employers Liability statutory limits as required by the State of Arizona.

**B. Other Insurance Provisions**

The policies or self-insurance certifications are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverage:

- a. The City, its officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor including the insured's general supervision of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor, or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, or volunteers, for work related to the Contractors, employees, agents, Subcontractors, or sub-Subcontractors activities.
- b. The Contractor's insurance coverage shall be primary as respects the City, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute to it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, or volunteers.
- d. Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employers Liability Coverage

The insurer shall agree to waive all rights of subrogation against the City, its officials, employees and volunteers for losses arising from work performed by the Contractor for the City.

3. All Coverages

Each insurance policy required by this agreement shall be endorsed to state the coverage shall not be suspended, voided, and/or canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

**C. Other Insurance Requirements:**

The Contractor shall:

1. Prior to commencement of services, furnish the City with certificates of insurance, in form and with insurers acceptable to the City which shall clearly evidence all insurance required in this agreement and provide that such insurance shall not be canceled, allowed to expire or be materially reduced in coverage except on 30 days prior written notice to and approval by the City, and in accord with stated insurance requirements of this bid solicitation. City shall not be obligated, however, to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed waiver of City's right to insist on, strict fulfillment of Contractor's obligations under this agreement.
2. Provide certified copies of endorsements and policies if requested by the City in lieu of or in addition to certificates of insurance.
3. Replace certificates, policies, and endorsements for any such insurance expiring prior to completion of services.
4. Maintain such insurance from the time services commence until services are completed. Should any required insurance lapse during the agreement term, requests for payments originating after such lapse shall not be

processed until the City receives satisfactory evidence of reinstated coverage as required by this agreement, effective as of the lapse date. If insurance is not reinstated, City may at its sole option, terminate this agreement effective on the date of such lapse of insurance.

5. Place such insurance with insurers and agents licensed and authorized to do business in Arizona and having a "Best's" rating of no less than A-VII.
6. Maintain such coverage continuously throughout the term of this agreement and without lapse for a period of two years beyond the agreement expiration, should any of the required insurance be provided under a claims-made form, to the extent that should occurrences during the agreement term give rise to the claims made after expiration of the agreement, such claims shall be covered by such claims-made policies. Such extension of coverage shall be evidenced by annual certificates of insurance.

#### **D. Subcontractors and Sub-Subcontractors**

Contractor shall include all Subcontractors and sub-Subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each Subcontractor and sub-Subcontractor. All coverage for Subcontractors and sub-Subcontractors shall be subject to all of the requirements stated herein for the Contractor.

#### **E. Safety**

The Contractor shall be solely and completely responsible for conditions of the job site, including safety of all persons (including employees) and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to all applicable federal (including OSHA), state, county, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the more stringent requirement shall be followed. The Contractor's failure to thoroughly familiarize himself with the aforementioned safety provisions shall not relieve him from compliance with the obligations set forth therein.

#### **8. Payments – After Services are rendered and Acceptance of Itemized Invoice**

Payment in full shall be made to the successful Contractor within thirty (30) days after receipt and acceptance of a complete invoice delivered to the City. Unless terms other than net 30 days are offered as a discount. The City shall not provide pre-payment for services. The invoice shall be sent to Susan Bennett at [Susan\\_Bennett@tempe.gov](mailto:Susan_Bennett@tempe.gov). Invoices shall include the agreement number, purchase order number, dates of services, the vehicles or personnel used, hourly rate, quantities, and extended rate, in addition to a total amount due to the Contractor.

#### **9. Indemnification**

To the fullest extent permitted by law, the CONSULTANT shall defend, indemnify and hold harmless the City, its agents, officer, officials, and employees from and against all claims, damages, losses and expenses (including but not limited to attorney's fees, court costs, and the costs of appellate proceedings), arising out of, or alleged to have resulted from the negligent acts, errors, mistakes, omissions, work, services, or professional services of the Consultant, its agents, employees, or any other person (not the City) for whose acts, errors, mistakes, omissions, work, services, or professional services the Consultant may be legally liable in the performance of this agreement. Consultant's duty to hold harmless and indemnify the City, its agents, officers, officials and employees shall arise in connection with any claim for damage, loss or expenses that is attributable to bodily injury, sickness disease, death, or injury to, impairment, or destruction of any person or property, including loss of use resulting therefrom, caused by any negligent acts, errors, mistakes, omissions, work, services, or professional services in the performance of this agreement by Consultant or any employee of the CONSULTANT, or any other person (not the City) for whose negligent acts, errors, mistakes, omissions, work, or services the CONSULTANT may be legally liable. The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of indemnity in this paragraph.

#### **10. Unauthorized Firearms & Explosives**

No person conducting business on City property is to carry a firearm or explosive of any type. Any City bidder, Contractor or Subcontractor is to honor this requirement at all times and failure to honor this requirement will result in agreement cancellation. This requirement also applies to persons who maintain a concealed weapons permit. In addition to agreement cancellation anyone carrying a firearm or explosive device will be subject to police and legal action.

11. **Whole Agreement**

This Agreement represents the parties' whole Agreement. There are no other promises, terms, conditions or obligations, and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written.

12. **Antidiscrimination Policy**

Offeror agrees that it will comply with section 2-603(5) of the Tempe City Code ("TCC"), and will not refuse to hire or employ or bar or discharge from employment any person or discriminate against such person in compensation, conditions, or privileges of employment because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status.

13. **Boycotts**

Offeror certifies that is not currently engaged in, and agrees for the duration of this Contract/Agreement that it will not engage in, a boycott of Israel, as that term is defined in A.R.S § 35-393.

14. **Conflict of Interest**

This Agreement is subject to Section 38-511, Arizona Revised Statutes. This agreement may be canceled if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City is an employee, consultant, or agent of any other party to this Agreement.

15. **Arbitration**

Notice is provided of Sections 12-1518 and 12-133. Arizona Revised Statutes.

16. **Dispute Resolution**

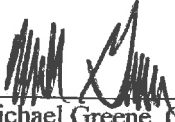
If a dispute arises under this Agreement, the parties agree to exhaust all applicable administrative remedies provided for under Arizona Law.

17. **Contractor's Records**

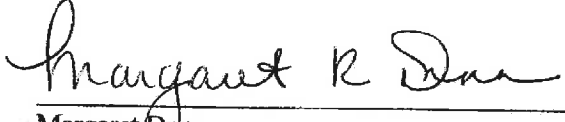
To the extent required by Section 35-214, Arizona Revised Statutes, Contractor agrees to retain all records relating to this Agreement. Contractor agrees to make those records available at all reasonable times for inspection and audit by the Auditor of the City of Tempe during the term of this Agreement and for a period of five (5) years after the completion of this Agreement.

Executed on the 29 day of July, 2019.

ON BEHALF OF CITY OF TEMPE

  
\_\_\_\_\_  
Michael Greene, CPPO  
Procurement Administrator

ON BEHALF OF DUNN TRANSPORTATION

  
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Margaret Dunn  
President