



REGIONAL TRANSPORTATION COMMISSION

Metropolitan Planning • Public Transportation & Operations • Engineering & Construction

Metropolitan Planning Organization of Washoe County, Nevada

January 18, 2019

AGENDA ITEM 3.15

TO: Regional Transportation Commission

FROM:



Lee G. Gibson, AICP
Executive Director

SUBJECT: Contribution Agreement with the Downtown Reno Business Improvement District

RECOMMENDATION

Approve a Contribution Agreement with the Downtown Reno Business Improvement District, a private Nevada nonprofit corporation, in an amount not to exceed \$140,000 per year for three years for transit related purposes, including ambassador services, cleaning/maintenance services, enhanced police services, and other special services within a newly created business district located in the vicinity of downtown Reno; authorize the RTC Executive Director to execute the final Contribution Agreement.

SUMMARY

The City of Reno, pursuant to Ordinance No. 6455 adopted March 16, 2018, authorized the creation of the Downtown Reno Improvement District (BID) within the downtown Reno geographic area. The Downtown Reno Business Improvement District, a private Nevada nonprofit corporation (the "Downtown Reno Partnership"), was contracted by the City of Reno to manage and operate the BID. At the December 7, 2018, meeting of the RTC Board, the Executive Director was authorized to negotiate an agreement to contribute additional funds to the Downtown Reno Partnership for the purposes referenced above. The Executive Director has determined that \$140,000 per year for three years is a reasonable amount to contribute towards the services that the City and Downtown Reno Partnership will provide. RTC will fund this agreement with sales tax revenues.

The Contribution Agreement provides for RTC to make quarterly contributions of \$35,000.00 to the Downtown Reno Partnership. The agreement is for a three calendar year period, but will span FY2019 through FY2022. The agreement provides that the RTC's contributions may only be used for certain specified transit related purposes. An accounting may be conducted, at least annually, and if it is determined that any part of any RTC Contribution was not used as set forth in the agreement, then portions of the RTC Contributions not utilized for such purposes shall be refunded to RTC. These services include: i) augmenting Reno police services which support activities,

services and programs related to transportation, including enhanced patrols and policing services in and around the 4th Street Station, major transportation corridors such as 4th Street and Virginia Street near RTC owned transportation related assets, and within streets located along RTC bus routes; ii) operation of a Clean and Safe Program, including in and around the 4th Street Station and RTC owned assets, along major transportation corridors and along RTC bus routes within the downtown corridor; and iii) providing sanitation, street and sidewalk clean services including on demand spot cleaning in and around the 4th Street Station and RTC owned assets, along major transportation corridors and along RTC bus routes within the downtown corridor.

FISCAL IMPACT

The estimated fiscal impact, in addition to the \$10,019.59, which RTC has been assessed by the BID for Fourth Street Station, is \$140,000 annually; or \$420,000 over three years.

PREVIOUS ACTIONS BY BOARD

The Board authorized the Executive Director to negotiate this agreement at the December 7, 2018, meeting of the Board.

ADVISORY COMMITTEE(S) RECOMMENDATION

There are no advisory committee recommendations pertaining to this agenda item.

Attachment

CONTRIBUTION AGREEMENT

This Contribution Agreement (the "Agreement") is made this ____ day of January, 2019, by and among the Regional Transportation Commission of Washoe County (the "RTC") and the Downtown Reno Business Improvement District, a private Nevada nonprofit corporation (the "Downtown Reno Partnership").

RECITALS

WHEREAS, through the "Consolidated Local Improvement Law" (Chapter 271 of the Nevada Revised Statutes), counties, cities and towns are permitted to create Neighborhood Improvement Projects for the beautification and improvement of an area through the provision of promotional activities and related services; and

WHEREAS, the City of Reno created a Neighborhood Improvement Project in downtown Reno pursuant to NRS Chapter 271 and an ordinance adopted by the City of Reno, titled the "Downtown Reno Business Improvement District," and referred to herein as the "District," which will provide for the beautification and improvement of the downtown Reno corridor through the provision of services and implementation of improvements intended to create a dynamic, safe, clean, vibrant, livable and sustainable downtown in which to work, shop, live and recreate.

WHEREAS, pursuant to NRS Chapter 271.332, the City of Reno contracted with the Downtown Reno Partnership, an "association" within the meaning of NRS 271.057 by way of an Agreement for Professional Services (the "Professional Services Agreement") between the City of Reno and the Downtown Reno Partnership dated as of May 23, 2018, pursuant to which the Downtown Reno Partnership agreed to act as the private association responsible for managing and operating the District and performing the day-to-day operations of the District through funding received from special assessments on properties within the geographic boundaries of the District and other donations and contributions received to facilitate and enhance the services provided by the Downtown Reno Partnership.

WHEREAS, subject to available funding, the Downtown Reno Partnership was created to provide the following services within the District, all with the goal of providing a cleaner, safer, more attractive and livable urban core: i) augmenting Reno police services, ii) a "clean and safe" program ("Clean and Safe Program") that deploys teams of safety ambassadors, case workers and maintenance patrols throughout the District which provide quality of life enhancements, crime deterrence, engagement of the homeless population, on-demand safety escorts, ongoing public engagement, distribution of information concerning public transportation, and hospitality services; iii) District-wide sanitation, street and sidewalk cleaning services including, "on-demand spot cleaning" throughout the District; iv) security, sanitation and hospitality services; v) litter control, weed abatement, graffiti removal, and enhanced maintenance of public streets and sidewalks.

WHEREAS, subject to certain funding contributions from the Downtown Reno Partnership the City of Reno has agreed to provide supplemental policing services for the benefit of the downtown corridor.

WHEREAS, the Downtown Reno Partnership has identified a need to augment District assessment revenues with public and private contributions during the initial three years of operations in order to facilitate and ensure the Downtown Reno Partnership, in cooperation with the City of Reno, can provide the full complement of intended services within the District. Numerous private and public entities, including the State of Nevada, have donated or contributed such funding to the Downtown Reno Partnership and/or City of Reno to date.

WHEREAS, the RTC's transit system is heavily invested in the downtown corridor and RTC operates numerous public transit facilities within the downtown corridor, including the 4th Street Station (the RTC's central transfer center through which nearly all RTC lines operate), a bus rapid transit line linking Sparks to the District, as well as numerous public transportation lines and passenger stations.

WHEREAS, the RTC's 2040 Regional Transportation Plan (the "RTP") identifies planning priorities which are consistent with the services to be provided by the District, including, but not limited to (i) proactive safety planning, including partnering with law enforcement agencies like the City of Reno Police Department; (ii) enhancement of safety and security within the RTC's public transportation system; (iii) and maintenance of RTC facilities and assets.

WHEREAS, the services to be provided by the Downtown Reno Partnership (including the "clean and safe program" and funding of supplemental maintenance and police services) are consistent with the RTP and will directly and substantially improve the safety, appearance, accessibility, and security of the RTC's transit related assets and major public transportation corridors including 4th Street and Virginia Street, and the RTC's 4th Street Station, and enhance passenger safety and experience and facilitate and encourage increased use of public transportation, all of which will provide substantial direct and indirect benefits to RTC's public transit system and services and programs related to transportation through functions and services which RTC cannot provide.

WHEREAS, the parties desire RTC to contribute \$140,000 per year in 2018, 2019 and 2020 ("RTC Contributions") to the Downtown Reno Partnership and/or City of Reno to augment revenues from District assessments, such RTC Contributions to be earmarked for use by the Downtown Reno Partnership in furtherance of one or more of the following purposes (collectively, the "Permitted Uses"): i) augmenting Reno police services which support activities, services and programs related to transportation, including enhanced patrols and policing services in and around the 4th Street Station, major transportation corridors such as 4th Street and Virginia Street near RTC owned transportation related assets, and within streets located along RTC bus routes; ii) operation of the Clean and Safe Program around the 4th Street Station and RTC owned assets, along major transportation corridors and along RTC bus routes within the downtown corridor; and iii) providing sanitation, street and sidewalk clean services including on demand spot cleaning in and around the 4th Street Station and RTC owned assets, along major transportation corridors and along RTC bus routes within the downtown corridor.

NOW, THEREFORE, in consideration of the aforesaid recitals, which are incorporated by reference into this Agreement, the parties mutually agree as follows:

1. Contribution. RTC hereby agrees to make the RTC Contributions to the Downtown Reno Partnership of One Hundred Forty Thousand and NO/100 Dollars (\$140,000.00) per calendar year. The RTC Contributions shall be payable in equal quarterly installments of Thirty Five Thousand and NO/100 Dollars (\$35,000.00), payable within thirty (30) days from receipt of an invoice for such payment from the Downtown Reno Partnership. It is anticipated that two quarterly payments will be made in RTC fiscal year 2019 (March 2019 and June 2019), four quarterly payments will be made in RTC fiscal year 2020 (September 2019, December 2019, March 2020, and June 2020), four quarterly payments will be made in RTC fiscal year 2021 (September 2020, December 2020, March 2021, and June 2021), and two quarterly payments will be made in RTC fiscal year 2022 (September 2021 and December 2021).
2. Use of Proceeds. The Downtown Reno Partnership shall use the RTC Contributions, in strict accordance with the provisions of the Professional Services Agreement, only for the Permitted Uses within the geographic boundaries of the District.

3. Accounting. At least annually, the Downtown Reno Partnership shall provide an accounting of the use and utilization of the RTC Contributions. To the extent that any RTC Contributions are not utilized for Permitted Uses within twelve (12) months of their contribution to the Downtown Reno Partnership, such RTC Contributions shall be refunded to RTC.
4. Termination. Upon thirty (30) days prior written notice to the Downtown Reno Partnership, RTC may terminate this Agreement on January ____, 2020 or January ____, 2021, if the RTC Executive Director determines that the RTC Contributions are not providing sufficient benefits to the transit system.
5. Indemnification By Downtown Reno Partnership. The Downtown Reno Partnership shall indemnify, defend, protect, and hold harmless the RTC and its officers, employees, agents, and volunteers from and against all liabilities, claims, demands, damages (including but not limited to civil fines and penalties), and costs (including but not limited to reasonable attorneys' fees and litigation costs through final resolution) (collectively, "Claims") arising out of or related to i) any material default by Downtown Reno Partnership of its obligations under this Agreement or ii) the acts or omissions of Downtown Reno Partnership in connection with providing Permitted Uses or any of the activities or improvements described in the Professional Services Agreement or while otherwise administering or implementing the Management Plan referenced therein, to the extent such Claims do not arise out of the acts or omissions of RTC or any material default by RTC of its obligations under this Agreement. The Downtown Reno Partnership's obligation under this subsection includes, but is not limited to, all of the following:
 - a. Tortious acts or omissions by the Downtown Reno Partnership or any of its officers, employees, agents, or volunteers; by any of the Downtown Reno Partnership's subcontractors, excluding the City of Reno and RTC; and by any other person or entity employed by, acting on behalf of, or acting as the authorized agent for the Downtown Reno Partnership or any of the Downtown Reno Partnership's subcontractors, excluding the RTC and City of Reno.
 - b. All liabilities, claims, demands, damages, and costs arising from injury to, or death of, any person, from damage to, or destruction of, any property (including the environment), or from violation of law, to the extent caused by Downtown Reno Partnership.
 - c. The Downtown Reno Partnership's obligations under this subsection are separate from its obligations under the Insurance provision of this Agreement, and will survive the expiration or early termination of this Agreement.
6. Indemnification By RTC. The RTC shall indemnify, defend, protect and hold harmless Downtown Reno Partnership from and against any Claims arising out of or related to any material default by RTC of its obligations under this Agreement. With the exception of any Claims related to failure to timely disburse RTC Contributions to the Downtown Reno Partnership, the RTC will not waive and intends to assert available NRS Chapter 41 liability limitations in all other cases. Contractual liability associated with this Agreement of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified. Damages for any RTC breach with respect to disbursement of RTC Contributions shall never exceed the amount of RTC

Contributions authorized for payment under this Agreement, but not yet paid to the Downtown Reno Partnership.

7. Insurance. The Downtown Reno Partnership shall maintain, during the term of this Agreement, an occurrence comprehensive general liability insurance for limits of not less than one million dollars (\$1,000,000) for bodily injury and property damages, per occurrence. As evidence of liability insurance coverage, the RTC will accept certification of insurance issued by an authorized representative of the insurance carrier. Coverage must be provided by an insurance company licensed to do business in the State of Nevada with an A.M. Best Rating of A – Class VII or better. Each certificate shall contain a 30-day written notice of cancellation to the certificate holder and shall name the RTC as an additional insured, and waive subrogation, if the policy so allows and at the expense of the RTC, if there is a cost. The Downtown Reno Partnership shall carry during the term of this Agreement, Workers' Compensation Insurance under the laws of the State of Nevada, to cover any compensable injuries or diseases arising during the performance of this Agreement.
8. RTC Default. The following event, if uncured after expiration of the applicable cure period, shall constitute an "RTC Default": RTC breaches any material provision of this Agreement, fails to timely make RTC Contributions to Downtown Reno Partnership as required under this Agreement, or otherwise fails to comply with any other term, covenant or condition of this Agreement.

In the event of an RTC Default, Downtown Reno Partnership shall notify the RTC in writing of its purported breach or failure, and the RTC shall have thirty (30) days from receipt of such notice to cure such breach or failure. If the RTC does not cure within such period, then Downtown Reno Partnership shall be entitled to (i) terminate this Agreement by written notice to the RTC; (ii) prosecute an action for damages; (iii) obtain specific performance of this Agreement or any provision hereof; and/or (iv) pursue any other rights afforded it in law or in equity (including, without limitation, the right to recover all costs and expenses incurred by the Downtown Reno Partnership in connection with this Agreement); provided, however, in the event the cure of such purported breach or failure will reasonably require greater than thirty (30) days to complete, then such RTC Default will not be deemed to exist provided the RTC promptly commences and thereafter diligently pursues to completion the cure of such purported breach or failure.

9. Downtown Reno Partnership Default. Each of the following events, if uncured after expiration of the applicable cure period, shall constitute a "Downtown Reno Partnership Default"
 - a. Downtown Reno Partnership misappropriates any RTC Contribution, or violates any applicable Law in performing its obligations under this Agreement; or
 - b. Downtown Reno Partnership breaches any material provision of this Agreement or otherwise fails to comply with any other term, covenant or condition of this Agreement.

In the event of a Downtown Reno Partnership Default, the RTC shall first notify the Downtown Reno Partnership in writing of its purported breach or failure, and the Downtown Reno Partnership shall have thirty (30) days from receipt of such notice to

cure such breach or failure. If the Downtown Reno Partnership does not cure within such period, then, RTC shall be afforded all of the following rights and remedies: (i) terminating in writing this Agreement; (ii) prosecuting an action for damages; (iii) seeking specific performance of this Agreement; and (iv) any other remedy permitted by law; provided, however, in the event the cure of such purported breach or failure will reasonably require greater than thirty (30) days to complete, then such Event of Default will not be deemed to exist provided the Downtown Reno Partnership promptly commences and thereafter diligently pursues to completion the cure of such purported breach or failure and completion of the cure occurs no later than ninety (90) days after the initial written notice provided by the RTC, unless extended by RTC.

10. Compliance with Laws. Downtown Reno Partnership shall comply with all applicable Laws in the performance of its obligations under this Agreement.

11. Notices. All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the following addresses:

a. RTC: Regional Transportation Commission of Washoe County
1105 Terminal Way, Suite 300
Reno, Nevada 89502
Attention Lee Gibson, Executive Director

b. Downtown Reno Partnership: Downtown Reno Business Improvement District
Attn: Board President
P.O. Box 2670
Reno, Nevada 89505

With a copy to:
McDonald Carano LLP
Attn: Michael Pagni
P.O. Box 2670
Reno, Nevada 89505

12. Remedies. Except as otherwise provided for by law or this Agreement, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs.

13. Waiver. A party's failure to insist on strict performance of this Agreement or to exercise any right or remedy upon the other party's breach of this Agreement will not constitute a waiver of the performance, right, or remedy. A party's waiver of the other party's breach of any term or provision in this Agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other term or provision. A waiver is binding only if set forth in writing and signed by the waiving party.

14. Force Majeure. Neither party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires,

explosions, or acts of God, including without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Agreement after the intervening cause ceases.

15. Partial Invalidity. If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.
16. Assignment. Downtown Reno Partnership shall not assign this Agreement to any person without the prior written consent of the RTC.
17. Proper Authority. The parties hereto represent and warrant that the person executing this Agreement on behalf of each party has full power and authority to enter into this Agreement.
18. Governing Law/Jurisdiction. This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada and the ordinances of the RTC, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The parties consent to the exclusive jurisdiction of the Second Judicial District Court, Washoe County, Nevada for enforcement of this Agreement.
19. Entire Agreement and Modification. This Agreement constitutes the entire agreement of the parties and as such is intended to be the complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Headings are for convenience only and shall not be construed as material. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistent with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement, no modification or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed and approved by the respective parties hereto. This Agreement may be executed in counterparts.
20. Approvals. Whenever this Agreement calls for RTC approval, consent, or waiver, the written approval, consent, or waiver of the RTC Executive Director shall constitute the approval, consent, or waiver of the RTC, without further authorization required from the RTC Board, provided however that entry in to this Agreement shall be subject to and conditioned upon approval of the RTC Board of Commissioners.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and intend to be legally bound thereby.

DOWNTOWN RENO PARTNERSHIP:
DOWNTOWN BUSINESS IMPROVEMENT DISTRICT,
A Nevada nonprofit corporation

By: _____
Cindy Carano, President

Dated: _____

RTC:
THE REGIONAL TRANSPORTATION COMMISSION OF WASHOE COUNTY

By: _____
Lee Gibson, Executive Director

Dated: _____

APPROVED AS TO FORM

Dale E. Ferguson, General Counsel