



BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS

Award Contract Grant

Requested Board Meeting Date: November 7, 2017

** = Mandatory, information must be provided*

or Procurement Director Award

***Contractor/Vendor Name/Grantor (DBA):**

Regional Transportation Authority (RTA)

***Project Title/Description:**

Tangerine Road, Dove Mountain Boulevard to La Canada Drive Improvement Project, RTA Roadway Element #1

***Purpose:**

Intergovernmental Agreement with Regional Transportation Authority to provide project funding

***Procurement Method:**

Non-Procurement Contract as identified in BOS D29.4 - Intergovernmental Agreement

***Program Goals/Predicted Outcomes:**

The project will widen the roadway to 4 lanes in order to accommodate the increase in traffic

***Public Benefit:**

The traveling public will experience less congestion, increased mobility and overall improved safety

***Metrics Available to Measure Performance:**

Standard engineering design performance measures (scope, budget and schedule, quality/stakeholder reviews, etc.)

Standard construction performance measures (schedule and budget, quality control testing, material submittals, etc.)

***Retroactive:**

No

Contract / Award Information

Document Type: CT Department Code: TR Contract Number (i.e., 15-123): 18*98

Effective Date: 11/7/2017 Termination Date: 12/31/2020 Prior Contract Number (Synergen/CMS): _____

Expense Amount: \$* \$2,890,000.00 Revenue Amount: \$ _____

*Funding Source(s) required: Development Impact Fees

Funding from General Fund? Yes No If Yes \$ _____ % _____

Contract is fully or partially funded with Federal Funds? Yes No

*Is the Contract to a vendor or subrecipient? N/A

Were insurance or indemnity clauses modified? Yes No

If Yes, attach Risk's approval

Vendor is using a Social Security Number? Yes No

If Yes, attach the required form per Administrative Procedure 22-73.

Amendment / Revised Award Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____

Amendment No.: _____ AMS Version No.: _____

Effective Date: _____ New Termination Date: _____

Prior Contract No. (Synergen/CMS): _____

Expense or Revenue Increase Decrease Amount This Amendment: \$ _____

Is there revenue included? Yes No If Yes \$ _____

*Funding Source(s) required:

Funding from General Fund? Yes No If Yes \$ _____ % _____

Grant/Amendment Information (for grants acceptance and awards) Award Amendment

Document Type: _____ Department Code: _____ Grant Number (i.e., 15-123): _____

Effective Date: _____ Termination Date: _____ Amendment Number: _____

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

*All Funding Source(s) required:

*Match funding from General Fund? Yes No If Yes \$ _____ % _____

*Match funding from other sources? Yes No If Yes \$ _____ % _____

*Funding Source: _____

*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)? _____

Contact: Rick Ellis

Department: Transportation Telephone: 724-6410

Department Director Signature/Date: Ana M. Alvarez 10/4/17

Deputy County Administrator Signature/Date: _____ 10/5/17

County Administrator Signature/Date: _____ 10/16/17
(Required for Board Agenda/Addendum Items)

CONTRACT	
NO. <u>CT-TR-18-098</u>	
AMENDMENT NO. _____	
This number must appear on all invoices, correspondence and documents pertaining to this contract.	

**Intergovernmental Agreement
Between
The Regional Transportation Authority of Pima County
and
Pima County
for the
Tangerine Road, Dove Mountain Boulevard to La Cañada Drive
Improvement Project, RTA Roadway Element #1**

This Agreement (hereinafter “the Agreement”) is entered into by and between the Regional Transportation Authority of Pima County (“ the RTA”), a special taxing district formed pursuant to Title 48 Chapter 30 of the Arizona Revised Statutes (A.R.S.), and Pima County, a body politic and corporate of the State of Arizona (“the County”), pursuant to A.R.S. §§ 11-952 and 11-1103.

RECITALS

- A. A.R.S. § 48-5301, et seq., authorizes the RTA to act as a regional taxing authority for the purpose of funding multi-modal transportation operations and improvements identified in the Regional Transportation Plan (“the Plan”), approved by the voters at the special election held in Pima County, Arizona, on May 16, 2006.
- B. The governing board of the RTA is composed of representatives of each member of the regional council of governments in accordance with A.R.S. § 48-5303.
- C. Pursuant to A.R.S. § 48-5304 (12), the governing board of the RTA has the authority to implement the elements of the Plan.
- D. Pursuant to A.R.S. § 48-5304 (13), the governing board of the RTA shall coordinate the implementation of the Plan among the local jurisdictions.
- E. Pursuant to A.R.S. § 48-5304 (18), the governing board of the RTA has the authority to enter into agreements to exercise its power and carry out its responsibilities.
- F. A Regional Transportation Fund was established by the Arizona Legislature per A.R.S. § 48-5307 to be the repository for those funds collected for the purpose of funding the transportation projects identified in the Plan.
- G. The RTA is authorized by A.R.S. § 48-5308 to distribute the regional transportation funds to the members of the RTA and to sell bonds in furtherance of that purpose to fund those projects or programs identified in the Plan.

- H. The design and construction of improvements to Tangerine Road from Dove Mountain Boulevard to La Cañada Drive (“the Phase”) is a portion of one of the Tangerine Road from Interstate 10 to La Cañada Drive projects (“the Project”) included in the Plan.
- I. The Phase includes all land within the Project which lies outside of the corporate limits of the towns of Oro Valley and Marana (“the Unincorporated Portion”). The Unincorporated Portion consists of approximately 1,800 linear feet of right-of-way.
- J. The Town of Marana has been identified by the Authority as the Lead Agency for the Phase and is responsible for all aspects of Phase implementation including, but not limited to planning, management, risk management, design, service delivery and operation, administration, advertisement, award, execution and administration of the Phase.
- K. The Lead Agency, the County, and the RTA wish to cooperate in the design and construction of the Phase.
- L. The County desires to contribute funding to the Phase, based on the length of the Unincorporated Portion, from County development impact fees collected in the Cañada Del Oro Benefit Area. The County anticipates that its contribution to the Phase will consist of development impact fees in the Cañada Del Oro Benefit Area account as of the effective date of this Agreement (“Accrued Balance”), along with development impact fees collected from development within the Cañada Del Oro Benefit Area after the effective date of this Agreement until December 31, 2020 (“Future Fees”), up to a maximum of \$2,890,000. As of June 30, 2017, the approximate Accrued Balance was \$1,621,918.
- M. The County intends to contribute funding to the Phase under the terms and conditions contained in this Agreement, and has entered into this Agreement with the RTA for that purpose.

NOW, THEREFORE, the County and the RTA, pursuant to the above and in consideration of the matters and things set forth herein, do mutually agree as follows:

AGREEMENT

1. Purpose. The purpose of this Agreement is to set forth the responsibilities of the parties with regard to the County’s contribution of County development impact fees in the amount of \$2,890,000 to the construction of the Phase (“County Contribution”). The amount of the County Contribution was calculated as the County’s pro rata share of the total cost of the Phase based on the length of the Unincorporated Portion, in accordance with all laws, policies, and regulations regulating the use of impact fees in unincorporated areas of Pima County, and using cost information resulting from previous design efforts as well as the information contained in the Guaranteed Maximum Price (GMP) for this Phase.

2. Project. The Project consists of the design and construction of 4-lane desert parkway roadway improvements to Tangerine Road from Interstate 10 to La Cañada Drive, which is a portion of the project identified as Roadway Improvement Element project #1 in the RTA’s

Regional Transportation Plan approved by the voters at the special election held in Pima County, Arizona, on May 16, 2006.

3. Effective Date; Term. This Agreement shall be effective on the date it is fully executed by both parties and shall continue in effect until the County Contribution has been made in full, or December 31, 2020, the time at which the current impact fee program expires, unless earlier terminated or extended as otherwise authorized by this Agreement or by written agreement of the parties.

4. Responsibilities of Pima County:

- a. Payment of County Contribution. The County shall, within sixty (60) days after execution of this Agreement, pay the Accrued Balance in the Cañada del Oro Benefit Area, less any portion of the Accrued Balance that, at the time of payment, is committed toward another project in that benefit area, to the RTA upon execution of this Agreement. If the County retains any portion of the Accrued Balance because it is committed to other projects, the County will notify the RTA in writing the amount retained and the project to which those funds are committed. Thereafter, the County shall pay, on a quarterly basis, all Future Fees collected within the Cañada Del Oro Benefit Area since the most recent payment was made until the total amount of payments reaches the County Contribution, until December 31, 2020, or until its payment obligation is otherwise terminated under this Agreement. The County shall account for all reasonable impact fee collections/payments in its annual budget and maintain the Phase on its Capital Improvement Plan for the Cañada del Oro Benefit Area until the County Contribution has been paid in full, until December 31, 2020, or until the County's payment obligation is otherwise terminated under this Agreement.
- b. County Contribution Limited to Development Impact Fees. County development impact fees may be limited in any given fiscal year if actual revenues available to the County do not meet forecast collection rates. The County shall use its best efforts to provide the stated impact fees in accordance with the schedule identified above and shall take all steps necessary to protect and maintain the impact fee rates, associated capital improvement plans and schedules necessary for the timely repayment to the RTA. However, the sole source of funds toward the County's payment of the County Contribution is development impact fees from the Cañada Del Oro Benefit Area, and if sufficient fees are not collected by December 31, 2020, to pay the County Contribution in full, the County is not obligated to make any further payments toward the Phase from any other funding source, unless the County, in the exercise of its legislative authority and in compliance with statutory requirements, adopts a new impact fee program under which the Phase is a project for which impact fees can be expended.
- c. Effect of Annexation. In the event that any part of the Unincorporated Portion is annexed into another jurisdiction while this Agreement is effective, the County Contribution will be reduced by a pro rata share that represents the percentage of the entire length of the Unincorporated Portion, except that under no circumstances will the RTA be required to repay any funds already received from the County. For example, if the annexation reduced the length of the Unincorporated Portion to 900 feet, the County Contribution would be reduced to \$1,445,000. If the entire Unincorporated Portion is annexed into

another jurisdiction while this Agreement is effective, the County's payment obligations under this Agreement will terminate upon the effective date of the annexation, and the County will thereafter not be obligated to make any further payments to the RTA.

5. Responsibilities of RTA:

The RTA shall advance the County's development impact fee funds pledged to the Phase as it deems appropriate and in accordance with the terms and conditions specified in the intergovernmental agreement entered into by the RTA and the Lead Agency for the Phase.

- a. Limitation on Collection of Development Impact Fees. RTA hereby acknowledges that County development impact fees may be limited in any given fiscal year if actual revenues available to the County do not meet forecast collection rates due to a variety of reasons including actions of the Arizona Legislature to restrict the use of collected development impact fees, increases in cost of construction materials or fuels, or other negative economic factors.
- b. County Contribution Limited to Development Impact Fees. RTA further hereby acknowledges that the sole source of funds toward the County's payment of the County Contribution is development impact fees from the Cañada Del Oro Benefit Area, and if sufficient fees are not collected by December 31, 2020, to pay the County Contribution in full, the County is not obligated to make any further payments toward the Phase from any other funding source.
- c. County's Current Development Impact Fee Program to Expire. RTA hereby acknowledges that the County's current development impact fee program will expire on December 31, 2020. RTA further acknowledges that the County's future decision to adopt a new development impact fee program will be within the County's legislative discretion and subject to statutory requirements. RTA acknowledges that, if the County Contribution is not paid in full by December 31, 2020, the County will not be obligated to pay the remainder of the County Contribution unless the County, in the exercise of its legislative authority and in compliance with statutory requirements, adopts a new impact fee program under which the Phase is a project for which impact fees can be expended.
- d. RTA hereby acknowledges that the Cañada Del Oro Benefit Area is receiving limited contributions, and fulfilling this Agreement significantly limits the County's ability to contribute the amount of approximately \$3,000,000 that is identified for the northern segment of La Cholla, from Overton to Tangerine.

6. Termination. Either party may terminate this Agreement for material breach of the Agreement by the other party. Prior to any termination under this paragraph, the party allegedly in default shall be given written notice by the other party of the nature of the alleged default. The party said to be in default shall have forty-five days to cure the default. If the default is not cured within that time, the other party may terminate this Agreement. Any such termination shall not relieve either party from liabilities or costs already incurred under this Agreement.

- a. Termination at Will. This Agreement may be terminated at any time, without cause, by providing written notice of such termination to the other party at least ninety (90) days prior to the termination date.
- b. A.R.S. § 38-511. This Agreement is subject to A.R.S. § 38-511.

7. Indemnification

- a. Mutual Indemnity. To the fullest extent permitted by law, each party to this Agreement shall indemnify, defend and hold the other party, its governing board or body, officers, departments, employees and agents, harmless from and against any and all suits, actions, legal or administrative proceedings, claims, demands, liens, losses, fines or penalties, damages, liability, interest, attorney's, consultant's and accountant's fees or costs and expenses of whatsoever kind and nature, resulting from or arising out of any act or omission of the indemnifying party, its agents, employees or anyone acting under its direction or control, whether intentional, negligent, grossly negligent, or amounting to a breach of contract, in connection with or incident to the performance of this Agreement.
- b. Notice. The County shall notify the RTA in writing within thirty (30) days of the receipt of any claim, demand, suit or judgment against the receiving party for which the County intends to invoke the provisions of this Article. Each party shall keep the other party informed on a current basis of its defense of any claims, demands, suits, or judgments under this Article.
- c. Negligence of indemnified party. The obligations under this Article shall not extend to the negligence of the indemnified party, its consultants, contractors or employees.

8. Insurance

When requested by the other party, each party shall provide proof to the other of their worker's compensation, automobile, accident, property damage, and liability coverage or program of self-insurance.

9. Books and Records.

Each party shall keep and maintain proper and complete books, records and accounts, which shall be open for inspection and audit by duly authorized representatives of any other party at all reasonable times.

10. Non-assignment.

Neither party to this Agreement shall assign its rights under this Agreement to any other party without written permission from the other party to this Agreement.

11. Construction of Agreement.

- a. Entire agreement. This instrument constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. Any exhibits to this Agreement are incorporated herein by this reference.

- b. Amendment. This Agreement may be modified, amended, altered or changed only by written agreement signed by both parties.
- c. Interpretation. All provisions of this Agreement shall be construed to be consistent with the intention of the parties as expressed in the Recitals hereof.
- d. Captions and Headings. The headings used in this Agreement are for convenience only and are not intended to affect the meaning of any provision of this Agreement.
- e. Severability. In the event that any provision of this Agreement or the application thereof is declared invalid or void by statute or judicial decision, such action shall have no effect on other provisions and their application, which can be given effect without the invalid or void provision or application, and to this extent the provisions of the Agreement are severable. In the event that any provision of this Agreement is declared invalid or void, the parties agree to meet promptly upon request of the other party in an attempt to reach an agreement on a substitute provision.

12. Legal Jurisdiction. Nothing in this Agreement shall be construed as either limiting or extending the legal jurisdiction of the County or the RTA.

13. No Joint Venture It is not intended by this Agreement to, and nothing contained in this Agreement shall be construed to, create any partnership, joint venture or employment relationship between the parties or create any employer-employee relationship between the County and RTA employees, or between RTA and County employees. Neither party shall be liable for any debts, accounts, obligations nor 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.

14. No Third Party Beneficiaries. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or affect the legal liability of either party to the Agreement by imposing any standard of care different from the standard of care imposed by law.

15. Compliance with Laws. The parties shall comply with all applicable federal, state and local laws, rules, regulations, standards and executive orders, without limitation to those designated within this Agreement.

a. Anti-Discrimination. The provisions of A.R.S. § 41-1463 and Executive Order Number 99-4 issued by the Governor of the State of Arizona are incorporated by this reference as a part of this Agreement.

b. Americans with Disabilities Act. This Agreement is subject to 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.

c. Workers' Compensation. An employee of either party shall be deemed to be an "employee" of both public agencies, while performing pursuant to this Agreement, only

for purposes of A.R.S. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers' compensation benefits, which may accrue. Each party shall comply with the employee notice provisions of A.R.S. §§ 23-906(D) and 23-1022(E).

d. Development Impact Fees. The provisions of A.R.S. §§ 11-1102 and 11-1103, and Pima County Code Title 19, govern the assessment and cooperative expenditure of County development impact fees. County warrants that the terms of this Agreement do not violate County's statutory authority nor any of the terms of any other agreements to which County is a party.

16. Waiver. Waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

17. Force Majeure. A party shall not be in default under this Agreement if it does not fulfill any of its obligations under this Agreement because it is prevented or delayed in doing so by reason of uncontrollable forces. The term "uncontrollable forces" shall mean, for the purpose of this Agreement, any cause beyond the control of the party affected, including but not limited to failure of facilities, breakage or accident to machinery or transmission facilities, weather conditions, flood, earthquake, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, strike, lockout, labor dispute, boycott, material or energy shortage, casualty loss, acts of God, or action or non-action by governmental bodies in approving or failing to act upon applications for approvals or permits which are not due to the negligence or willful action of the parties, order of any government officer or court (excluding orders promulgated by the parties themselves), and declared local, state or national emergency, which, by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligations by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

18. Notification. All notices or demands upon any party to this Agreement shall be in writing, unless other forms are designated elsewhere, and shall be delivered in person or sent by mail addressed as follows:

The RTA:

Farhad Moghimi, Executive Director
Regional Transportation Authority
1 E. Broadway Blvd., Suite 401
Tucson, AZ 85701

Pima County:

Ana Olivares, P.E., Interim Director
Pima County Department of Transportation
201 N. Stone Avenue, 4th Floor
Tucson, AZ 85701

19. Remedies. Either party may pursue any remedies provided by law for the breach of this Agreement. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or in equity or by virtue of this Agreement.

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

instrument. The signature pages from one or more counterpart may be removed from such counterpart and attached to a single instrument.

In Witness Whereof, Pima County has caused this Agreement to be executed by the Chair of the Pima County Board of Supervisors, and the RTA has caused this Agreement to be executed by the Regional Transportation Authority of Pima County's Chair of the Board.

PIMA COUNTY:

Chair, Board of Supervisors

Date

ATTEST:

Clerk of the Board

Date

REGIONAL TRANSPORTATION AUTHORITY OF PIMA COUNTY:

Board Chair

Date

ATTEST:

Farhad Moghimi, Executive Director

Date

ATTORNEY CERTIFICATION

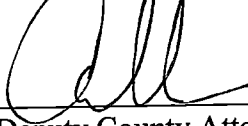
The foregoing Agreement by and between the Regional Transportation Authority of Pima County and Pima County has been reviewed pursuant to A.R.S. § 11-952 by the undersigned who have determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those parties to the Agreement.

Regional Transportation Authority of Pima County:

Attorney for the Authority

Date

Pima County:



Deputy County Attorney

ANDREW FLAGG

9/29/2017

Date