



BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS

Requested Board Meeting Date: ^{11/22/16} 10/18/2016

or Procurement Director Award

Contractor/Vendor Name: City of Tucson
(DBA):

Project Title/Description:
Naylor/Changemaker Sidewalks & Improvements

Purpose:
The Intergovernmental Agreement states the City of Tucson will maintain the project for 25 years while the County will use Neighborhood Reinvestment (NR) bond sale proceeds to design, construct and install new sidewalks and all weather crossing at Naylor Wash and install drainage chicanes/basins. Project was requested by the neighborhood association and approved by the NR Oversight Committee who recommended funding to the Board of Supervisors.

Procurement Method:
Board Approval of NR Oversight Committee's recommendations on 4/5/16

Program Goals/Predicted Outcomes:
Address current drainage issues and provide safe routes to schools.

Public Benefit:
Invest in economically disadvantaged neighborhood and meet neighborhood master plan objectives.

Metrics Available to Measure Performance:
Benefit to 1,072 residents of medium to medium-low stress neighborhood and Changemaker school students.

Retroactive:
No

Original Information

Document Type: CTN Department Code: CD Contract # (i.e.,15-123): 17000000000000000028
Effective Date: 10/19/2016 Termination Date: 12/31/2018 Prior Contract Number (Synergen/CMS):

Expense Amount: \$ 0.00 Revenue Amount: \$

Funding Source(s): Neighborhood Reinvestment General Obligation Bonds

Cost to Pima County General Fund: \$ 0.00

Contract is fully or partially funded with Federal Funds? Yes No Not Applicable to Grant Awards

Were insurance or indemnity clauses modified? Yes No Not Applicable to Grant Awards

Vendor is using a Social Security Number? Yes No Not Applicable to Grant Awards

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

To: COB 10-14-16 (81)
Ver. 1
Pgs. 13 Addendum

171640957 PCD K OF RP

Amendment Information

Document Type: Department Code: Contract Number (i.e.,15-123):
Amendment No.: AMS Version No.:
Effective Date: New Termination Date:
Expense Revenue Increase Decrease Amount This Amendment:
Funding Source(s):
Cost to Pima County General Fund: \$

Contact: Denise Sauer, Contract Specialist 4-2772/Martha Martin, Comm Dev Housing Plnr II 724-2463

Department: Community Development & Neighborhood Conservation Telephone: 724-2463

Department Director Signature/Date: Margaret M. Kue 10/11/2016

Deputy County Administrator Signature/Date: Sherr 10/12/2016

County Administrator Signature/Date: C. Decker 10/12/16
(Required for Board Agenda/Addendum Items)

PIMA COUNTY COMMUNITY DEVELOPMENT AND NEIGHBORHOOD CONSERVATION DEPARTMENT		<table border="1"> <tr> <td colspan="2" style="text-align: center;">CONTRACT</td> </tr> <tr> <td>NO.</td> <td><i>CTN-CD-17-028</i></td> </tr> <tr> <td>AMENDMENT NO.</td> <td>_____</td> </tr> <tr> <td colspan="2"> <small>This number must appear on all invoices, correspondence and documents pertaining to this contract.</small> </td> </tr> <tr> <td colspan="2"> </td> </tr> <tr> <td colspan="2"> </td> </tr> </table>	CONTRACT		NO.	<i>CTN-CD-17-028</i>	AMENDMENT NO.	_____	<small>This number must appear on all invoices, correspondence and documents pertaining to this contract.</small>					
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AMENDMENT NO.	_____													
<small>This number must appear on all invoices, correspondence and documents pertaining to this contract.</small>														
PROJECT:	NAYLOR-CHANGEMAKER SIDEWALKS & IMPROVEMENTS													
RECIPIENT:	CITY OF TUCSON													
CONTRACT TERM:	FROM DATE AGREEMENT IS EXECUTED TO DECEMBER 31, 2018													
AMOUNT:	-0-													
FUNDING:	2004 Neighborhood Reinvestment General Obligation Bond Sale Proceeds													

This Intergovernmental Agreement is entered into by and between Pima County, a body politic and corporate of the State of Arizona (“County”) and the City of Tucson, a municipal corporation of the State of Arizona (“City”).

RECITALS

- A. In an election held on May 18, 2004 (2004 Special Bond Election), Pima County voters authorized the sale of bonds and use of proceeds for, *inter alia*, acquiring, developing, expanding, improving and equipping new and existing facilities to further the health, education, welfare and safety of the citizens of the County, including, without limitation, housing and other improvements and facilities to further neighborhood reinvestment.
- B. In compliance with Pima County Code Chapter 3.06, titled Bonding Disclosure, Accountability and Implementation, the Board of Supervisors adopted Ordinance No. 2004-18, the Bond Implementation Plan, May 18, 2004 Special Election (the “2004 Bond Ordinance”).
- C. Section VII(B)(1)(c)(2.9) of the 2004 Bond Ordinance allocated twenty million dollars (\$20,000,000.00) in bond proceeds to be used for Neighborhood Reinvestment projects--the funding of small scale, targeted capital improvement projects throughout Pima County in high stress neighborhoods characterized by indicators of economic and social need including, but not limited to poverty and unemployment, substandard housing, and high crime rates.
- D. Implementation of Neighborhood Reinvestment projects is subject to, *inter alia*, Section VII(B)(1)(c) of the 2004 Bond Ordinance, and Chapter 3.06 of the Pima County Code.
- E. Pursuant to the 2004 Bond Ordinance, no more than five hundred thousand dollars (\$500,000.00) of 2004 bond proceeds may be allocated to an individual reinvestment project.
- F. The Naylor-Changemaker Neighborhood Association (the “Community Group”) submitted a proposal (“Proposal”) requesting funding for \$229,000.00 improvements (the “Project,” described in Exhibit A).
- G. Funding for the Project has been recommended by the Neighborhood Reinvestment Oversight Committee and approved by the Board of Supervisors. The neighborhood to be benefited by the Project is described in Exhibit A attached hereto.

- H. County is authorized by A.R.S. §11-254.04 to expend public funds to improve or enhance the economic welfare of inhabitants of the County.
- I. City is authorized by A.R.S. § 9-276(A) to layout and establish, regulate the use, open, vacate, alter, widen, extend, grade, pave, plant trees or otherwise improve streets, alleys, avenues, sidewalks, parks, public grounds, off-street parking and erect lights.
- J. County and City may contract for services and enter into agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-951 *et seq.*
- K. County and City wish to cooperate in the design and construction of new sidewalks on the east side of Belvedere, an all-weather crossing on the Swan Park Wash, and drainage chicanes/basins on the west side of Belvedere to improve pedestrian access and control drainage conditions (“the Project”).
- L. The cost of the Project is currently estimated at \$229,000.00. The County is willing to allocate \$229,000.00 of bond proceeds (the “Maximum Allocated Amount”) for the Project. City is willing to and will pay all Project costs in excess of the Maximum Allocated Amount.
- M. City is willing to operate and maintain the Project for a period of no less than 25 years.

NOW THEREFORE, County and City, pursuant to the above, and in consideration of the terms and agreements hereinafter set forth, do mutually agree as follows:

INTERGOVERNMENTAL AGREEMENT

1.0 TERM AND AMENDMENTS

- 1.1 The term of this Agreement will begin on the date this Agreement is executed by both parties, and will remain in effect until December 31, 2018 or until the project is completed and the County has made the last payment, whichever is sooner.
- 1.2 Except as set forth in paragraph 1.4 below, any modification of the Agreement termination date must be by formal written amendment executed by the parties hereto.
- 1.3 Any amendments to the Agreement must be approved by the County before any services under the amendment commences.
- 1.4 Minor modifications may be made by written memorandum approved and signed by the Director of the Pima County Community Development and Neighborhood Conservation Department or designee. Minor modifications are changes in the scope or budget, which do not change the specified purpose, outcomes or the total compensation provided through this Agreement and do not in any way increase the direct or indirect liability of the County under this Agreement.

2.0 SCOPE OF SERVICES

- 2.1 **Purpose and Project.** This Agreement sets forth the roles and responsibilities of the Parties for the design, construction, maintenance and operation of the Project as more fully described in the attached Exhibit A and to address legal and administrative matters among the Parties. With City cooperation, County will design and construct the Project.
- 2.2 **Design.** The following provisions apply to design activities for the Project:
 - 2.2.1 **Consultants.** If consultants are employed to design any portion of the Project, County will:
 - 2.2.1.1 Prepare the contracts for design and choose the consultant(s).

- 2.2.1.2 Have the usual rights of the owner of a public design contract, including the authority to approve changes and make payments, subject to coordination with City, as described in this Agreement.
- 2.2.2 Design Standards and Features and Cooperation.
 - 2.2.2.1 Prior to preparation of the final plans and specifications, County and City will meet to cooperatively determine the codes and industry standards that apply to the Project (“the design standards”) and elements to be included in the Project (“the design”).
 - 2.2.2.2 Coordination will include meetings and information exchanges between corresponding personnel at all levels for the Project.
 - 2.2.2.3 A representative of the community group that applied for funds for the Project will be designated by the community group. The designated representative will be included in all meetings and discussions between the County and City.
 - 2.2.2.4 County and the designated community group representative will both be responsible for keeping the community group informed about the Project.
- 2.3 Review of Bids/Termination.
 - 2.3.1 Title 34. County will solicit bids and award all construction contracts for the Project in compliance with Title 34 of the Arizona Revised Statutes.
 - 2.3.2 City Review. Prior to publishing solicitations for all construction contracts for the Project:
 - 2.3.2.1 County will give City a minimum of five (5) business days to review and comment on each solicitation, including the proposed scope of work.
 - 2.3.2.2 If City comments on the solicitations, County and City will meet to discuss and resolve any issues raised by City.
 - 2.3.2.3 If City does not comment within the period set forth in paragraph 2.3.2.1, County may proceed and publish the solicitation.
 - 2.3.3 Bids in Excess of Available Funds.
 - 2.3.3.1 If the lowest responsible bid exceeds the available funds for the Project, County and City will, immediately following opening, conduct a joint review of the bids to determine appropriate action.
 - 2.3.3.2 If a course of action acceptable to both County and City cannot be agreed upon, all bids will be rejected and this Agreement will be deemed to terminate by mutual consent.
 - 2.3.3.3 If County and City agree to continue with the Project at a higher cost, the Parties will take all necessary steps to amend this Agreement and the Bond Ordinance as provided in Sections 1.0 and 5.0 of this Agreement.
 - 2.3.4 Division of Costs. If, upon joint review of the bids, County and City decide not to proceed with the Project and this Agreement is terminated by mutual consent (whether pursuant to paragraph 2.3.3.2 or otherwise), the costs incurred for the Project prior to such termination will be allocated equally to County and City.

2.4 **Construction.**

2.4.1 **Contract Awards.** County will:

- 2.4.1.1 Award and administer the construction contracts for the Project in compliance with the requirements of Title 34 of the Arizona Revised Statutes and the Construction Schedule set forth below.
- 2.4.1.2 Have the usual rights of the owner of a public construction contract.

2.4.2 **Construction Schedule.** County will:

- 2.4.2.1 Be responsible for preparing a schedule (“the Construction Schedule”) showing the anticipated timing and duration of each stage of construction and the anticipated date of substantial completion.
- 2.4.2.2 Within thirty (30) days of execution of this Agreement, County will provide City with a preliminary Construction Schedule.
- 2.4.2.3 Within thirty (30) days of award of the last construction contract by County, County will provide City with a Final Construction Schedule.

2.4.3 **Change in Scope.** County will not change the scope of the Project without first consulting with, and obtaining the approval of, both City and the Community Group.

2.5 **Utility Relocations.** City will be responsible for coordinating and paying for the costs of all utility relocations required for the Project.

2.6 **Rights of Way and Construction Easements.** City will acquire, either by purchase or through its power of eminent domain, all rights of way and construction easements necessary for completion and continued maintenance of the Project.

2.7 **Site Access, Inspection and Cooperation.** City will allow County representatives and contractors unrestricted access to the Project site during all phases of the Project.

2.8 **Permits.**

- 2.8.1 County will obtain any approvals, permissions or permits necessary for the completion of the Project.
- 2.8.2 County and City will cooperate to obtain permits necessary for completion of the Project.
- 2.8.3 County bond proceeds, provided pursuant to this Agreement, may be spent for expenses associated with permits or fees.

2.9 **Public Participation.** County and City acknowledge that the Project is being constructed for the benefit of the residents of the neighborhood and that the community group is an integral part of the process being undertaken pursuant to this Agreement. To ensure community awareness and involvement in the Project, County will cooperate with City to:

- 2.9.1 Coordinate all publicity for and public participation activities for the Project and at the Project site.
- 2.9.2 Hold public meetings about the Project in compliance with the Pima County Board of Supervisors Policy 3.5 – *Notification to Board of Supervisors of Public Meetings to be held in their District* and Pima County Administrative Procedure 3.8 – *Implementation of Pima County Policy 3.5* which are incorporated into and made a part of this Agreement by reference.
- 2.9.3 Conduct regular meetings with the community group to provide updates on the progress and status of the Project.

2.10 **County Recognition.** City will:

2.10.1 Acknowledge County's contribution to the Project in a form approved by County. Acceptable forms of recognition may include, but are not limited to: signs, permanent plaques, press releases and recognition at opening ceremonies.

2.10.2 Erect signs provided by County at the construction site. The signs will:

2.10.2.1 Be placed at locations agreed upon by the Parties;

2.10.2.2 Identify "Pima County Bond Funds" as the source of funding for the Project;

2.10.2.3 Conform to the requirements of the City of Tucson Sign Code, Ch. 3, §§ 3-1 through 3-139; and

2.10.2.4 Be returned to County after completion of construction and, if applicable, the dedication of the Project.

2.11 **Project Manager and Representatives.**

2.11.1 County will assign a qualified Project Manager to oversee all aspects of the Project.

2.11.2 City will designate a staff member to act as the City Liaison to the Project Manager during construction of the Project.

2.12 **Disputes.** In the event the Project Manager and City Liaison disagree on any aspect of the Project, the issue in dispute will be submitted to the directors of the relevant County and City departments and then, if necessary to the Deputy County Administrator for Community and Health Services and the Assistant City Manager. If these individuals cannot resolve the dispute, the issue will be submitted to the County Administrator and the City Manager for resolution.

2.13 **Regulation of the Project during Construction.** County will have the responsibility for and control over the Project during construction.

3.0 **OWNERSHIP AND OPERATION**

3.1 **Ownership of Project Improvements.**

3.1.1 Ownership and title to all materials, equipment and appurtenances installed pursuant to this Agreement will automatically vest in City.

3.1.2 City will not dispose of or encumber its title or other interest in the Project improvements for a period of at least twenty-five (25) years following the date the Project is completed.

3.2 **Operation.** For at least twenty-five (25) years following the date the Project is completed, City will:

3.2.1 Operate and maintain the Project improvements for its intended purposes, for the benefit of the public;

3.2.2 Insure the Project improvements (through either direct or self-insurance coverage);

3.2.3 Maintain, repair and replace the Project improvements as needed to insure safe access and use;

3.2.4 Ensure that the Project improvements are available to all residents of Pima County without restriction or preference to jurisdiction or location of residence; and

3.2.5 Ensure that any fee charged for the use of the Project does not exceed the fee charged by County for a similar purpose.

3.3 This Section 3.0 will survive the expiration of this Agreement.

4.0 FINANCE AND PAYMENT

4.1 Financing the Project.

- 4.1.1 County will allocate up to \$229,000.00 of bond proceeds (“the Maximum Allocated Amount”) for construction of the Project. County will not encumber any County additional funds for the Project.
- 4.1.2 County bond proceeds must be used only for the reasonable costs of Project design, engineering, permitting and construction.
- 4.1.3 City will not be reimbursed for any City management or administrative costs of the Project.
- 4.1.4 Allocation and payment of County bond proceeds in excess of the Maximum Allocated Amount will require an executed amendment to this Agreement and, if necessary, an amendment to the Bond Ordinance by the Pima County Board of Supervisors.
- 4.1.5 In the event that the costs for the Project, as planned, exceed the Maximum Allocated Amount, the Scope of the Project will be reduced pursuant to Exhibit A – Scope, paragraph 4.1.

4.2 Transaction Privilege Tax.

- 4.2.1 City agrees that any transaction privilege and use taxes levied by the City on the Project will be contributed to the Project as a portion of City’s share of the costs of the Project.
- 4.2.2 City will:
 - 4.2.2.1 Provide an accounting to County of the total amount of transaction privilege and use taxes collected by the City for the Project; and
 - 4.2.2.2 Pay the total amount of such taxes to County in accordance with this Agreement.

5.0 BOND FUNDING REQUIREMENTS

- 5.1 **Compliance.** City agrees to comply with all applicable provisions of Pima County Code Chapter 3.06 – *Bonding Disclosure, Accountability, and Implementation* and the Bond Ordinance, as they now exist or may hereafter be amended.
- 5.2 **Reports.** Any reports to be submitted by City to County in compliance with Pima County Code Chapter 3.06 or the Bond Ordinance must be provided in a format and schedule determined by County.
- 5.3 **Amendment to the Bond Ordinance.**
 - 5.3.1 City will notify County of any event that would require an amendment of the Bond ordinance and will formally request that the Pima County Board of Supervisors hold a public hearing on the requested amendment.
 - 5.3.2 County and City will follow the procedures for amendment of the Bond Ordinance set forth in Pima County Code Chapter 3.06, as it may be amended or renumbered from time to time, and the relevant sections of the Bond Ordinance.
 - 5.3.3 In the event that the Board of Supervisors does not approve City’s request for a Bond Ordinance amendment, City will complete the Project as defined by the Bond Ordinance and this Agreement.

5.4 **Federal Treasury Regulations.**

5.4.1 City acknowledges that:

5.4.1.1 County manages the expenditures of bond proceeds in order to qualify for a spending exception to the arbitrage rebate requirements of Sections 148 through 150 of the Internal Revenue Code of 1986 and the related regulations found in 26 CFR Part 1, §§1.148 through 1.150 as may be modified from time to time (“the Tax Exempt Bond Rules”).

5.4.1.2 Arbitrage rebate is affected by both the use of bond proceeds and the timing of bond-related expenditures.

5.4.2 Notwithstanding any other provision of this Agreement, County may, in its sole discretion, either reallocate funds for the Project to other county bond-funded projects (which may, in some circumstances, result in a delay in payments under this Agreement) or terminate this Agreement as set forth in Section 8.0 below, if County determines that reallocation or termination is necessary or advantageous to County under the Tax Exempt Bond Rules in order to:

5.4.2.1 Qualify for a spending exception to the arbitrage rebate requirements; or

5.4.2.2 Reduce the amount of any potential arbitrage rebate or penalty; or

5.4.2.3 Manage County’s Bond proceeds.

6.0 INSURANCE. County is self-insured and such self-insurance is sufficient to cover the activities set forth in this Agreement.

7.0 INDEMNIFICATION

7.1 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”) arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, agents, employees, or volunteers.

7.2 Preexisting Conditions. To the fullest extent permitted by law, City will indemnify, defend and hold County, its boards, officers, departments, employees and agents, harmless from and against any claims and damages, as fully set out above, resulting from or arising out of the existence of any substance, material or waste, regulated pursuant to federal, state or local environmental laws, regulations or ordinances, that is present on, in or below or originated from property owned or controlled by the City prior to the execution of this Agreement.

7.3 Notice of Claim. Each party will notify the other in writing within thirty (30) days of the receipt of any claim, demand, suit or judgment against the receiving party for which the receiving party intends to invoke the provisions of this Section 7.0. Each party shall keep the other party informed on a current basis of its defense of any claims, demands, suits, or judgments under this Section 7.0.

7.4 Negligence of Indemnified Party. The obligations under this Section 7.0 will not extend to the negligence of the indemnified party, its agents or employees.

7.5 This Section 7.0 will survive the expiration of this Agreement.

8.0 TERMINATION

8.1 Termination for Convenience: County reserves the right to terminate this Agreement at any time and without cause by serving upon City thirty (30) days advance written notice of such intent to

terminate. In the event of such termination, the County's only obligation to City will be payment for services rendered prior to the date of termination.

- 8.2 Insufficient Funds: Notwithstanding paragraph 8.1 above, if any state or federal grant monies used to pay for performance under this Agreement are reduced or withdrawn, County will have the right to either reduce the services to be provided and the total dollar amount payable under this Agreement or terminate the Agreement. To the extent possible, County will endeavor to provide fifteen (15) days written notice of such reduction or termination. In the event of a reduction in the amount payable, County will not be liable to City for more than the reduced amount. In the event of a termination under this paragraph, County's only obligation to City will be payment for services rendered prior to the date of termination to the extent that grant funds are available.
- 8.3 Termination for Cause: This Agreement may be terminated at any time without advance notice and without further obligation by the County when the City is found by County to be in default of any provision of this Agreement.
- 8.4 Non-Appropriation: Notwithstanding any other provision in this Agreement, this Agreement may be terminated 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 Agreement. In the event of such termination, County will have no further obligation to City, other than for services rendered prior to termination.
- 8.5 Suspension: County reserves the right to suspend City's performance under this Agreement immediately upon notice delivered to City's designated agent in order to investigate City's activities and compliance with this Agreement. In the event of an investigation by County, City will cooperate fully and provide all requested information and documentation. At the conclusion of the investigation, or within forty-five (45) days, whichever is sooner, City will be notified in writing that the contract will be immediately terminated or that performance may be resumed.
- 8.6 Arbitrage Rebate Requirements. The County reserves the right to unilaterally terminate this Agreement if the County determines, in County's sole discretion, that any action or inaction on the part of City is likely to occur that would adversely affect the election made by the County under the Tax Exempt Bond Rules relating to exceptions for arbitrage rebate.

9.0 CANCELLATION FOR 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.

10.0 BOOKS, RECORDS AND INSPECTIONS

Count must keep and maintain proper and complete books, records and accounts of the Project. For bond purposes, the Project books and records must continue to be maintained for a period of three (3) years after final payment of the bonds issued for the Project. The bonds funding the Project are expected to be fully paid by June 30, 2031, but may be subject to refunding.

11.0 COMPLIANCE WITH LAWS

City and County will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Agreement. The laws and regulations of the State of Arizona will govern the rights of the parties, the performance of this Agreement, and any disputes hereunder. Any action relating to this Agreement must be brought in a court of the State of Arizona in Pima County. Any changes in the governing laws, rules, and regulations during the terms of this Agreement will apply, but do not require an amendment.

12.0 NOTICE

Any notice required or permitted to be given under this Agreement must be in writing and must be served by delivery or by certified mail upon the other party as follows:

County:

C.H. Huckelberry, County Administrator
130 W. Congress, 10th Floor
Tucson, AZ 85701

Robin Brigode, Clerk of the Board
130 W. Congress, 5th Floor
Tucson, AZ 85701

Margaret Kish, Director
Pima County Community Development and
Neighborhood Conservation
2797 E. Ajo Way
Tucson, AZ 85713

City:

Michael Ortega, City Manager
255 W. Alameda
Tucson, AZ 85701

13.0 FORCE MAJEURE

A party will 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" means, 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 will exercise due diligence to remove such inability with all reasonable dispatch.

14.0 ASSIGNMENT

City will not assign its rights to this Agreement in whole or in part, without prior written approval of the County. Approval may be withheld at the sole discretion of the County, provided that such approval will not be unreasonably withheld.

15.0 NON-DISCRIMINATION

- 15.1 City agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 including flow down of all provisions and requirements to any subcontractors.
- 15.2 During the performance of this contract, City will not 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.

16.0 AMERICANS WITH DISABILITIES ACT

City 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. If City is carrying out a government program or services on behalf of County, then City will maintain accessibility to the program to the same extent and degree that would be required by the County under 28 CFR Sections 35.130, 35.133, 35.149 through 35.151, 35.160, 35.161 and 35.163. Failure to do so could result in the termination of this Agreement.

17.0 FULL AND COMPLETE PERFORMANCE

The failure of either party to insist on one or more instances upon the full and complete performance of any of the terms or conditions of this Agreement to be performed on the part of the other, or to take any action permitted as a result thereof, will not be construed as 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. The acceptance by either party of sums less than may be due and owing it at any time will not be construed as an accord and satisfaction.

18.0 LEGAL ARIZONA WORKERS ACT COMPLIANCE

- 18.1 City hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to City's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). City will further ensure that each subcontractor who performs any work for City under this contract likewise complies with the State and Federal Immigration Laws.
- 18.2 County will have the right at any time to inspect the books and records of City and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.
- 18.3 Any breach of City's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, will be deemed to be a material breach of this Agreement subjecting City to penalties up to and including suspension or termination of this Agreement. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, City 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, (subject to County approval if Minority and Women Business E preferences apply) as soon as possible so as not to delay project completion.
- 18.4 City will advise each subcontractor of County's rights, and the Subcontractor's obligations, under this Section 18.0 by including a provision in each subcontract substantially in the following form:
- "Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor will be deemed to be a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."*
- 18.5 Any additional costs attributable directly or indirectly to remedial action under this Section will be the responsibility of City. In the event that remedial action under this Section results in delay to one or more tasks on the critical path of City's approved construction or critical milestones schedule,

such period of delay will be deemed excusable delay for which City will be entitled to an extension of time, but not costs.

19.0 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 will be cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Agreement.

20.0 WORKER'S COMPENSATION

Each party shall comply with the notice of A.R.S. § 23-1022(E). For purposes of A.R.S. § 23-1022, each party shall be considered the primary employer of all personnel currently or hereafter employed by that party, irrespective of the operations of protocol in place, and said party shall have the sole responsibility for the payment of Worker's Compensation benefits or other fringe benefits of said employees.

21.0 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 County and any City employees, or between City and any County employees. Neither party shall 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.

22.0 LEGAL JURISDICTION AND AUTHORITY

Nothing in this Agreement shall be construed as either limiting or extending the legal jurisdiction of County or City. Neither party warrants to the other its legal authority to enter into this Agreement. If a court, at the request of a third person, should declare that either party lacks authority to enter into this Agreement, or any part of it, then the Agreement, or parts of it affected by such order, shall be null and void, and no recovery may be had by either party against the other for lack of performance or otherwise.

23.0 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 effect the legal liability of either party to the Agreement by imposing any standard of care different from the standard of care imposed by law.

24.0 SEVERABILITY

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

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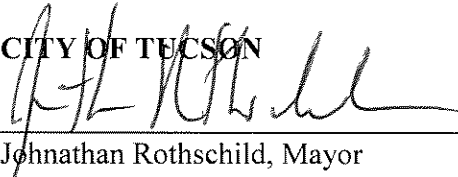
25.0 ENTIRE AGREEMENT

- 25.1 This document constitutes the entire agreement between the parties pertaining to the subject matter hereof.
- 25.2 No verbal agreements or conversations with any officer, agent or employee of County prior to or after the execution of this Agreement will affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement will be considered as unofficial information and in no way binding upon County and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein.
- 25.3 This Agreement may be modified, amended, altered or extended only by a written amendment signed by the parties.

IN WITNESS THEREOF, the parties have affixed their signatures to this Agreement on the date written below.

THIS AGREEMENT MAY BE EXECUTED IN COUNTERPARTS.

PIMA COUNTY

CITY OF TUCSON

 Johnathan Rothschild, Mayor

Chair, Board of Supervisors


Date: October 19, 2016

Date: _____

ATTEST:

ATTEST:

Clerk of the Board


 City Clerk, Roger W. Randolph

Date: October 19, 2016

Date: _____

APPROVED AS TO CONTENT:

APPROVED AS TO CONTENT:

Director, Community Development and Neighborhood Conservation



 Director, Department of Transportation

The foregoing Intergovernmental Agreement between Pima County and City of Tucson has been reviewed pursuant to A.R.S. §11-952 by the undersigned Deputy County Attorney and the City of Tucson Attorney, 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 represented by Pima County and City of Tucson.

PIMA COUNTY:

CITY OF TUCSON:


 Karen S. Friar, Deputy County Attorney


 Mike Rankin, City Attorney

SCOPE OF SERVICES

1.0 Project Overview. Pima County General Obligation Bond sale proceeds have been allocated for the design, purchase and installation of an all-weather bridge, sidewalks, drainage and catch basins to improve pedestrian access and drainage conditions to benefit the Naylor-Changemaker neighborhood (“the Project”).

2.0 Project. County will:

2.1 Be responsible for the design, construction and installation of the Project. Based on anticipated costs, the components of the Project components are expected to include:

2.1.1 New sidewalks on the east side of Belvedere;

2.1.2 An all-weather bridge crossing the Swan Park Wash; and

2.1.3 Drainage and catch basins on the west side of Belvedere to improve pedestrian access and drainage conditions.

2.2 Ensure compliance with City of Tucson Department of Transportation roadway standards and design.

3.0 Budget.

3.1 County will pay for actual expenses of the Project which are anticipated as follows:

Activity	Amount Allocated
Design	\$ 27,000.00
Construction	\$202,000.00
MAXIMUM ALLOCATED AMOUNT	\$229,000.00

3.2 The Parties understand that County will not contribute more than the Maximum Allocated Amount to the Project. The final completed project may deviate from the Project Proposal originally submitted by the Community Group.

4.0 Deviations from Project Proposal.

4.1 In the event that costs or other circumstances require deviations from the Project as set forth in Section 2.0 above, City and County will meet with the Community Group to determine the changes that will most appropriately meet neighborhood needs.

4.2 The following deviations to the original proposal are anticipated:

4.2.1 Twelve feet (12’) Wide Pedestrian Bridge will be replaced by an all-weather crossing structure.

4.2.2 Bridge Abutment is deleted.

4.2.3 Twelve feet (12’) Wide Concrete Bridge Decking is deleted.

4.2.4 Water Harvesting Features (Chicanes) will be replaced with drainage and catch basins.

4.2.5 Landscaping is deleted.

END EXHIBIT A

SUBSTANTIAL CHANGE

BACKGROUND:

Pima County funds various Neighborhood Reinvestment and Affordable Housing Program projects with Pima County General Obligation Bond funds (“bond funds”). In order to receive funding, interested parties submit proposals or applications to either the Neighborhood Reinvestment Oversight Committee or the County Housing Commission (“recommending body”).

The Pima County Board of Supervisors (“Board”) reviews the recommendations and determines whether or not a particular project may be funded. Funding is awarded through the execution of a contract or intergovernmental agreement with the appropriate party or jurisdiction. Until such document is properly executed, no bond funds are committed to any particular project. Once a legally binding document is executed, County staff will manage the project to assure contractual compliance.

PURPOSE:

The contract or intergovernmental agreement sets forth the scope and design of the project. Allowances are made within the document for minor changes. However, at times, the contractor seeks to make a substantial change to the scope and design set forth either in the original proposal or application or in the executed document. The following procedures are established to direct the process for the approval of a substantial change to a project funded (or seeking funding) by Pima County General Obligation Bond monies.

PROCESS:

Once a project is approved by the recommending body, there are three points at which a substantial change might be requested: (1) prior to initial approval by the Board; (2) after Board approval, but before the execution of a legally binding document; or, (3) after the execution of a contract or intergovernmental agreement.

1.0 Prior to initial approval by the Board or after Board approval, but before the execution of a legally binding document.

- 1.1. The party or jurisdiction seeking bond funds, contacts Pima County Community Development & Neighborhood Conservation (“CDNC”) program manager regarding the requested change.
- 1.2. CDNC staff will determine if it is necessary to review documentation and, if so, what documentation the contractor or jurisdiction must provide for the review.
- 1.3. CDNC staff reviews the change and determines if the requested change is, in fact, substantial and if it is necessary to present the request to the recommending body.
- 1.4. The recommending body may ask the requesting party to:
 - 1.4.1. Make a formal presentation regarding the specific changes to the recommending body at a public meeting;
 - 1.4.2. Submit a written revision to the original proposal; or
 - 1.4.3. Submit a new proposal.

- 1.5. After review, the recommending body may choose to:
 - 1.5.1. Recommend that the Board approve the project for funding as revised; or
 - 1.5.2. Revoke the original recommendation for funding.

2.0 After the execution of a legally binding document.

- 2.1. The party or jurisdiction seeking bond funds, contacts CDNC director regarding the requested change.
- 2.2. CDNC staff will determine what documentation contractor or jurisdiction must provide for review.
- 2.3. CDNC staff reviews the change, assesses the impact of the proposed change and, if necessary, discusses the proposed change with the Pima County Attorney's Office.
- 2.4. CDNC staff will discuss the proposed change with the recommending body.
- 2.5. After review, the recommending body may choose to:
 - 2.5.1. Recommend that the Board of Supervisors (Board) approve the amended project for funding;
 - 2.5.2. Recommend that the Board not approve the amended project and continue to enforce the terms set forth in the initial contract or the IGA; or
 - 2.5.3. Recommend that the Board consider termination of the contract or IGA, as allowed under the terms of the contract or IGA.
- 2.6. If necessary, CDNC staff will prepare an amendment to the contract or IGA or the required termination documentation for the Board.
- 2.7. The Board, in its sole discretion, may accept and execute the amendment or proceed with the termination of the contract or IGA.

3.0 Program authority. The CDNC director or her designee is charged with reviewing any of the changes proposed by the contractor or the jurisdiction to determine if the proposed changes are a significant deviation from the original approved proposal. In the event that the CDNC director or her designee believe that the changes rise to the level of *substantial change* the process described in Sections 1.0 or 2.0 this document will be implemented.

4.0 Substantial changes. A *substantial change* includes, but is not limited to, any change in project concept, design or scope that would, by itself, or in combination with other factors do any of the following:

- 4.1. Result in a significant escalation in project cost. This includes either a change in the amount of bond funding sought or a change in other funds dedicated to the Project from other sources.
- 4.2. Impact or revise the stated intent of the original proposal or application.
- 4.3. Alter the number or type of specific units or amenities.
- 4.4. Alter the construction schedule in such a manner that will delay the completion of the project.
- 4.5. Alter the construction schedule in such a manner that will change the bond funding schedules.
- 4.6. Result in non-compliance with the bond ordinance.
- 4.7. Result in non-compliance with any federal or state law or regulation.

Monthly Progress Report
CCD.N04NAY: Naylor-Changemaker Sidewalks & Improvements
Project Manager: _____

Professional Services Status:

Contract Awarded: Yes No Consultant: _____
 Design Start Date Design End Date % Complete Total Value of Work Completed

		%	\$
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Construction Procurement Status:

In Process: Yes No Procurement Type: _____
 Procurement Start Procurement End % Complete
 Date Date

		%
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Construction Status:

Contract Awarded: Yes No Contractor: _____
 Construction Start Construction End % Complete Total Value of Work Completed
 Date Date

		%	\$
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Closeout Status:

Punch List Complete: Yes No Date open to Public: _____
 Closeout Start Date Closeout End Date % Complete Total Value of Work Completed

		%	\$
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Project Status Narrative

Signature: _____
 Print Name: _____

Date: _____
 Title: _____