



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

Requested Board Meeting Date: 4/4/2017

or Procurement Director Award

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

**Project Title/Description:**

Broadway Blvd: Euclid Avenue to County Club Road, widen to 6 lanes.

**Purpose:**

The purpose of this IGA is to update the County contributions to the City for costs associated with right of way acquisition and construction. In accordance with the 1997 voter approved bond program, the County and City entered into agreement in 2004 to fund a portion of this project. Initial design and right of way activities started in 2005, and ultimately this project was included in the RTA package approved by voters in 2006. The City Department of Transportation has completed planning efforts and activities, and is approaching the 60% design completion milestone, with right of way activities now fully underway. The City has requested the County's contribution at this time in order to maintain project progress and current schedule. This is an amendment to CT-01-04-T-135470-1204.

**Procurement Method:**

N/A; This is an IGA between the City of Tucson and Pima County.

**Program Goals/Predicted Outcomes:**

Once complete, the project will improve safety, reduce congestion and improve mobility throughout this segment of the Broadway corridor.

**Public Benefit:**

The traveling public will experience a better functioning roadway, with enhanced multi-modal features and elements.

**Metrics Available to Measure Performance:**

N/A

**Retroactive:**

No

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*To: CWB- 3-30-17 (3)  
pgs. - 22  
Addendum*

Procure Dept 03/29/17 09:19 AM

**Original Information**

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

Effective Date: \_\_\_\_\_ Termination Date: \_\_\_\_\_ Prior Contract Number (Synergen/CMS): \_\_\_\_\_

Expense Amount: \$ \_\_\_\_\_  Revenue Amount: \$ \_\_\_\_\_

Funding Source(s): \_\_\_\_\_

Cost to Pima County General Fund: \_\_\_\_\_

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.

**Amendment Information**

Document Type: CT Department Code: TR Contract Number (i.e., 15-123): 17\*320

Amendment No.: 1 AMS Version No.: 1

Effective Date: 4/4/2017 New Termination Date: 12/31/2022

Expense  Revenue  Increase  Decrease Amount This Amendment: \$ 0

Funding Source(s): 1997 Highway User Revenue Funds (HURF) Bonds

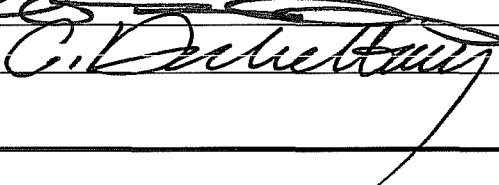
Cost to Pima County General Fund: \$0

Contact: Rick Ellis, Deputy Director

Department: Transportation Telephone: 520-724-6385

Department Director Signature/Date:  3/24/17

Deputy County Administrator Signature/Date:  3/27/17

County Administrator Signature/Date:  3/28/17  
*(Required for Board Agenda/Addendum Items)*

This number must appear on all correspondence and documents pertaining to this contract

**Amended and Restated Intergovernmental Agreement between  
Pima County and the City of Tucson  
for Roadway Improvements  
to Broadway Boulevard: Euclid Avenue to Country Club Road,  
Tucson, Arizona**

This Amended and Restated Intergovernmental Agreement ("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, Arizona ("City") pursuant to A.R.S. § 11-952.

**Recitals**

- A. 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.
- B. City is authorized by A.R.S. § 9-276 and its charter:
1. To exercise exclusive control over the streets, alleys, avenues and sidewalks of the City and to give and change the names thereof.
  2. To prevent and punish for the encumbering thereof, and to abate and remove all encumbrances and obstructions thereon.
  3. To widen, extend, straighten, regulate, grade, clean or otherwise improve the same.
  4. To open, lay out and improve new streets, avenues and alleys.
  5. To vacate or abandon any street, avenue, alley, park, public place or sidewalk, in such City or to abolish them, provided that rights-of-way or easements to existing sewer, gas, water or similar pipelines and appurtenances and for canals, laterals (or ditches and appurtenances, and for electric, telephone, and similar lines and appurtenances shall continue as they existed prior to the vacating, abandonment, or abolishment thereof.
  6. To protect the same from encroachment and injury.
- C. Pursuant to A.R.S. § 28-6701, the Tucson City Council may petition the Pima County Board of Supervisors to establish a county highway in the City and, pursuant to A.R.S. § 28-6702 and § 28-6703, the Board of Supervisors may establish a county highway in the City.

- D. County is authorized by A.R.S. § 28-6707 to construct and improve part of a highway located in an incorporated city or town in the same manner as if it were located outside an incorporated city or town.
- E. City intends to design and construct roadway improvements to Broadway Boulevard from Euclid Avenue to Country Club Road, Tucson, Arizona (“the Project”).
- F. County intends to cooperate with the City in the design and construction of the Project and to contribute County Highway User Revenue Fund (HURF) bond funds to the Project for design, right-of-way and construction.
- G. County and City previously entered into that certain “Intergovernmental Agreement between Pima County and the City of Tucson for Roadway Improvements to Broadway Boulevard: Euclid Avenue to Campbell Avenue, Tucson, Arizona,” recorded at Docket 12474, Page 02004, in the Office of the Pima County Recorder (“2004 Agreement”).
- H. The Project has been delayed and modified since the execution of the 2004 Agreement, and County and City now desire to amend and restate the 2004 Agreement to define the terms and conditions under which the Project currently is to be engineered, constructed, financed, and maintained.
- I. The Pima County Board of Supervisors included \$25,000,000 for the Project in the Bond Improvement Plan for the November 4, 1997, Special Bond Election. To date, County has contributed \$1,347,247 of that \$25,000,000 toward the cost of planning and right-of-way acquisition for the Project.
- J. The Pima County Board of Supervisors adopted guidelines for bonding disclosure, accountability and implementation of County transportation bond projects in other jurisdictions, which, as amended, are in Pima County Code Chapter 3.06, and Pima County Ordinance No. 1997-80, Section VIII, “Implementation of Transportation Projects in Other Jurisdictions.”
- K. The Pima County Board of Supervisors and the City of Tucson Mayor and Council adopted the “Memorandum of Understanding Between the Mayor of the City of Tucson and the Chairperson of the Pima County Board of Supervisors in Their Individual Capacities for 1997 Pima County Transportation Bond Program Remaining Projects Within the City Limits,” dated May 7, 2004, a copy of which is attached as **Exhibit A** to this Agreement.
- L. The estimated total cost of the Project is approximately \$71,347,000.
- M. County and City desire to agree that City will design and construct the Project and advertise, award, execute, and administer the design, right of way and construction contracts for the Project.

- N. City intends to cover all costs associated with the relocation and installation of any Tucson Water lines and hydrants in the Project.
- O. County wishes to contribute \$23,652,753, the remainder of the \$25,000,000 in County HURF bonds, for right of way acquisition and construction.
- P. At the conclusion of Project construction by City, and acceptance by City, and pursuant to A.R.S. § 28-7212, County will abandon the entire Project roadway and adjacent rights-of-way lying within the limits of City and City will accept it for inclusion in City's maintenance program.

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

#### **Agreement**

1. **Amendment and Restatement of 2004 Agreement.** This Agreement amends, restates, and replaces in its entirety the 2004 Agreement. Upon execution of this Agreement, the 2004 Agreement automatically terminates.
2. **Purpose.** The purpose of this Agreement is to set forth the responsibilities of the parties for the design, construction, maintenance and operation of the Project and to address legal and administrative matters among the parties.
3. **Project.** The Project consists of all aspects of the reconstruction and widening of Broadway Boulevard from Euclid Avenue to Country Club Road, Tucson, Arizona, including design, right-of-way acquisition, and construction.
4. **Design and Construction Responsibilities.** City shall be responsible for the complete design and construction of the Project in accordance with Design Standards included in the American Association of State Highway and Transportation Officials and Federal Highway Administration Standards for highway engineering and construction, the Pima County/City of Tucson Standard Specifications for Public Improvements, and City's municipal design guidelines. City shall advertise, award, execute and administer the design and construction contracts for the Project. City shall have the usual rights of the owner of a public construction contract, including the authority to approve changes and make payments.
5. **Utility Relocations.** City shall be responsible for all utility relocations within the Project boundaries. City shall be responsible for all costs of relocation of any Tucson Water lines and hydrants installed as part of the Project.

6. **Rights-of-Way and Construction Easements.** City shall acquire any rights of way and construction easements necessary for the Project.
7. **Project Permits.** City shall acquire all permits required in connection with the Project at no cost to the County.
8. **Public Art.** Public art shall be included in the Project in accordance with the standards set forth in the County's Bond Improvement Plan for the November 4, 1997, Special Bond Election, unless otherwise agreed by the parties.
9. **Public Participation.** City shall manage all public participation processes for design and construction of the Project.
10. **City and County Representatives.** City shall furnish a representative to perform the functions of a Project Manager, and County shall furnish a representative available to cooperate and consult with the City concerning all matters of the Project.
11. **Financing of the Project.**

- a. *Allocation of County bond funds.* A total of \$25,000,000.00 in County HURF bond funds was allocated for the Project in the 1997 Bond Improvement Plan adopted by the voters at the November 4, 1997, Special Bond Election. No November 4, 1997, County bond funds in excess of \$25,000,000.00 may be expended for the Project without the prior amendment of County Bond Ordinance 1997-80 by the Pima County Board of Supervisors and an amendment of this Agreement by the parties. The County's total contribution to the Project shall consist of \$25,000,000.00 of County HURF bond funds for design, right-of-way acquisition and construction for the Project. The County has previously paid to the City \$1,347,247 for planning and right-of-way acquisition for the Project. The County shall pay an additional \$20,000,000.00 in County HURF bond funds to the City in the period from fiscal year (FY) 2018 through FY 2020. The remaining \$3,652,753 shall be paid to the City starting in FY 2020. The expenditures in each of the referenced bond program periods are intended to comply with the terms of the May 7, 2004, Memorandum of Understanding between City and County (**Exhibit A**). City hereby acknowledges that County bond funds may be limited for City projects in any given fiscal year because actual revenues available to the County do not meet expectations due to a variety of reasons, such as actions of the Arizona Legislature to reduce state shared revenues, increased commodity costs of construction materials or fuels, or general economic conditions.

Subject only to the possible limitations above, the County will provide County HURF bond funds in accordance with the schedule identified in this section.

- b. *City responsibility for excess costs.* The County shall not be responsible for any costs of design, right-of-way, or construction of the Project in excess of \$25,000,000.00 of County HURF bond funds available for the Project.
- c. *Project savings.* Any Project savings shall be in accordance with the following:
  - i. The City shall commit to sell any remnant and/or surplus property at market value.
  - ii. The City may use remnant and/or surplus property to offset acquisition costs or facilitate cost-to-cure items.
  - iii. All savings resulting from sale of remnant and/or surplus property that occur prior to City's final acceptance of the Project ("Final Acceptance") shall be applied to the overall cost of the Project.
  - iv. All savings resulting from sale of remnant and/or surplus property that occur after Final Acceptance shall be applied in the following manner:
    - (a) If the total Project is over budget, the savings shall be applied to the overall Project.
    - (b) If the total Project is at or under budget, the savings shall be redistributed among all entities contributing funding to the Project based on the funding amount contributed for the parcel(s) that created the remnant and/or surplus property.
  - v. All Project savings after Final Acceptance shall be redistributed to the entities contributing funding to the Project in the following manner:
    - ✓ Pima County; \$25,000,000/\$71,347,000 which equals 35.0%
    - ✓ Regional Transportation Authority (RTA); \$42,125,000/\$71,347,000 which equals 59.0%
    - ✓ City of Tucson; \$4,222,000/\$71,347,000 which equals 6.0%
- d. *Transaction Privilege Tax.* City agrees that any transaction privilege and use taxes levied by the City on the Project shall be contributed to the Project as a portion of City's share of the costs of the Project. City shall provide an accounting to County of the total amount of transaction privilege and use taxes collected by the City for the Project.

## 12. Reporting and Payment Responsibilities.

- a. *Reimbursement Requests.* Within 20 days of the end of each month, City shall submit to County a Reimbursement Request, together with supporting documentation, for Project expenses paid by City, for which the County is responsible, since the last Reimbursement Request. As Project Manager, City shall be responsible for verifying the accuracy of all invoices, and shall, as part of its Reimbursement Requests, certify that said invoices have been paid by City (less any retention held by City), and are the responsibility of the County under this Agreement, prior to requesting reimbursement from the County.
- b. *Payment of Reimbursement Requests.* County shall review each monthly Reimbursement Request and, if County does not approve the request, County shall notify City of its

disapproval, and the reason for it, within seven (7) days after receipt of the Reimbursement Request. If County does not disapprove the Reimbursement Request, County shall pay the Reimbursement Request within twenty-one (21) days after receipt of the Reimbursement Request (except as set forth below with respect to the final accounting and payment).

- c. *Monthly Progress Reports.* Each month, at the same time the City submits its Reimbursement Request, it shall also submit a progress report (the “Progress Report”).
- d. *Submittal of Reports.* All Reimbursement Requests and Progress Reports shall be submitted to:

Pima County Department of Transportation, Engineering Division Manager  
201 N. Stone, 4th Floor  
Tucson, Arizona 85701

- e. *Final Report & Accounting.* Within ninety (90) days after completion and Final Acceptance, City shall submit to County a final Project recapitulation including all costs, funding sources and amounts. County shall have thirty (30) days after receipt of this final accounting to concur with the Project recapitulation. In the event County does not, within that thirty (30)-day period, notify City in writing, under the Notices provision of this Agreement, that it disputes the Project recapitulation, County shall be deemed to have conclusively waived any dispute regarding the Project recapitulation.

### 13. Establishment of County Highway.

- a. *Portion of Project Already Established.* Under the 2004 Agreement, City petitioned for the establishment of, and County established as a County highway, that portion of the Project depicted in attached **Exhibit B** (“the Original Portion”).
- b. *Petition to Establish Remaining County Highway.* Pursuant to A.R.S. § 28-6701(B), the Tucson City Council has petitioned the Pima County Board of Supervisors to establish a County highway for the remaining portion of the Project, described and depicted in attached **Exhibit C** (“the New Portion”).
- c. *Establishment of County Highway.* The Pima County Board of Supervisors shall take the actions required by A.R.S. § 28-6702 and § 28-6703 to establish the New Portion as a County highway.
- d. *Establishment for Funding Purposes Only.* The establishments of the Original Portion and the New Portion are solely for the purposes of allowing County to contribute HURF bond funds to the Project, and County at no time will be responsible for any activities



associated with design, right of way acquisition, permitting, utility relocation, constructing or maintaining the roadway.

**14. Regulation of the Project During Construction.** City will have responsibility for and control over highway access, traffic regulation and signing during construction.

**15. Ownership, Operation, and Maintenance.**

- a. *City Inspection.* City shall inspect all Project activities.
- b. *Abandonment of County Highway Within City.* Upon completion in substantial compliance with drawings and specifications and acceptance of the Project construction contract by City, County will abandon pursuant to A.R.S. § 28-7212 all of the Project roadway and adjacent rights-of-way lying within the limits of City.
- c. *Acceptance of the Project by City.* Upon completion in substantial compliance with drawings and specifications and acceptance of the Project construction contract by City, City will accept control of, and maintain, at its own cost and expense, the Project.
- d. *Insurance; Repair and Replacement.* City agrees to insure or self-insure the Project facilities after conveyance to City and to repair or replace the Project if damaged or destroyed.
- e. *Ownership of Installed Materials, Equipment and Appurtenances.* Upon completion of all work under this Agreement, ownership and title to materials, equipment and appurtenances installed within City's right of way will automatically be vested in City, and materials, equipment and appurtenances will be automatically be vested in City. No further agreement will be necessary to transfer ownership.

**16. Events Requiring Amendment of Bond Improvement Ordinance 1997-80.**

- a. If, after a public hearing, City's governing body determines that events require amendment of the Pima County Ordinance No. 1997-80, City shall notify the County in writing and shall formally request the Pima County Board of Supervisors to hold a public hearing on the necessary bond ordinance amendment.
- b. City's Bond Ordinance amendment request shall contain all of the following; i) a detailed discussion of the modification requested; ii) an explanation of the reasons for the request; iii) an indication of any related adjustments in the cost of the Project resulting from the modification; and iv) a request that the Board of Supervisors schedule a public hearing on the matter.

- c. Following the public hearing, the Board may approve an amendment of the Bond Ordinance and a corresponding amendment to this Agreement.

**17. Term and Termination of Agreement.**

- a. *Term.* This Agreement shall be effective on the date it is signed by the last party to sign and shall terminate upon final acceptance of the Project by City and abandonment of the Project to City by County, unless earlier terminated as provided herein. The term of this Agreement may be extended by action of the parties.
- b. *Termination.* This Agreement may be earlier terminated under the following circumstances:
  - i. *For Cause.* A 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 (45) 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.
  - ii. *Conflict of Interest.* This Agreement can be terminated for a conflict of interest as set forth in A.R.S. § 38-511, the relevant portions of which are hereby incorporated by reference.
  - iii. *Arbitrage Rebate Requirements.* The County reserves the right to cease payments to City and unilaterally terminate this Agreement if 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.
  - iv. *Bond Limitations.* County may unilaterally terminate this Agreement whenever the County determines violations of federal arbitrage regulations are likely to occur solely for the purpose of the County abiding by the limitations set forth in the May 7, 2004, Memorandum of Understanding relating to the County's outstanding obligations to manage all bond funds, arbitrage avoidance, and bond debt, as well as County's outstanding responsibilities to other projects outside of the City. City hereby recognizes and agrees that said County responsibilities may limit funds available for City projects in any given fiscal year because of revenues actually available to the County because of unrealized state shared revenues or general economic downturns and may reallocate the Project funds.

v. *Effect of Termination.* Any termination of this Agreement shall not relieve any party from liabilities or costs already incurred under this Agreement, nor affect any ownership of the Project constructed pursuant to this Agreement.

c. *Legal Authority.* 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.

d. *Ownership of Project upon Termination.* Any termination of this Agreement shall not relieve either party from liabilities or costs already incurred under this Agreement, nor affect any ownership of the Project constructed pursuant to this Agreement.

18. **Federal Treasury Regulations.** City acknowledges that 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 (such statutes and regulations hereinafter referred to as the "Tax Exempt Bond Rules"). City further acknowledges that arbitrage rebate is affected by both the use of bond proceeds and by the timing of bond related expenditures. Notwithstanding any other provision of this Agreement, County may, in County's sole discretion, either (i) reallocate Project funds to other projects funded with County bonds, or (ii) terminate this Agreement if, in County's sole determination, such reallocation or termination is necessary to the County under the Tax Exempt Bond Rules either (a) to qualify for a spending exception to the arbitrage rebate requirements, (b) to reduce the amount of any potential arbitrage rebate or penalty, or (c) to manage the County's bond proceeds.

19. **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, attorneys', consultants' and accountants' 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. *Preexisting conditions.* 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 claims and damages, as fully set out above in Paragraph 19(a), 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 indemnifying party prior to the execution of this Agreement.

- c. *Indemnification for Design.* To the fullest extent permitted by law, when County and City have agreed to use City Design Standards which differ from County standards for any element of the Project, City shall indemnify, defend and hold County, its board of supervisors, officers, departments, employees and agents, harmless from and against any claims and damages, as fully set out above in Paragraph 19(a), resulting from or arising out of the existence of the element, or naming the element as a cause of the harm or injury.
  - d. *Notice.* Each party shall 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 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.
  - e. *Negligence of Indemnified Party.* The obligations under this Article shall not extend to the negligence of the indemnified party, its agents or employees.
  - f. *Survival of Termination.* This Article shall survive the termination, cancellation or revocation, whether in whole or in part, of this Agreement.
20. **Insurance.** When requested by the other party, each party shall provide proof to the other of its workers' compensation, automobile, accident, property damage, and liability coverage or program of self-insurance.
21. **City Accounting of County Project Costs.** City shall account for all Project costs to be paid by County pursuant to this Agreement.
22. **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. All design and construction drawings, records, documentation and correspondence shall be the property of City at the completion of the Project, except copies maintained by County for its records.
23. **County Inspection and Audit.** County employees may perform any inspection of the Project or reasonable audit of any books or records of City in order for the County to satisfy

itself that the monies on the Project have been spent and the Project completed in accordance with this Agreement.

**24. 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.
- b. *Amendment.* This Agreement shall not be modified, amended, altered or changed except by written agreement signed by both parties.
- c. *Construction and 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 this 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.

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

**26. 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 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.

**27. Workers' Compensation.** An employee of either party shall be deemed to be an "employee" of both public agencies while performing pursuant to this Agreement, 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 that may accrue.

Each party shall post a notice pursuant to the provisions of A.R.S. § 23- 906 in substantially the following form:

All employees are hereby further notified that they may be required to work under the jurisdiction or control or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of workers' compensation.

28. **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 with respect to the maintenance of streets and highways different from the standard of care imposed by law.
29. **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 2009-09 issued by the Governor of the State of Arizona, which amended Executive Order 75-5 and superseded Executive Order 99-4, are incorporated by this reference as a part of this Agreement as if set forth in full herein.
  - 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. §1201-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and -36.
  - c. *Compliance with County Laws.* City agrees to comply with Pima County Code § 3.06.080, "Coordination with other capital planning of the county and region, and applicability to county bond projects implemented by other agencies" and Pima County Ordinance No. 1997-80, Section VIII, "Implementation of Transportation Projects in Other Jurisdictions," as amended.
  - d. *Legal Arizona Workers Act Compliance.* City warrants to County that it will, at all times during the term of this Agreement, comply with all federal immigration laws applicable to the warranting party's employment of its employees, and with the requirements of A.R.S. § 23-214(A) (together, the "State and Federal Immigration Laws"). City further agrees to ensure that each contractor who performs work associated with the Project (i) complies with the State and Federal Immigration Laws, and (ii) ensures that any

subcontractor who performs work for the contractor complies with the State and Federal Immigration Laws.

City shall further require that each contractor who performs work on the Project subject to this Agreement advises each subcontractor of City's rights, and the subcontractor's obligations, with respect to this subsection, 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 City 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.”

Any breach of the warranty of compliance with the State and Federal Immigration Laws by City or any City contractor or subcontractor on the Project shall be deemed to be a material breach of this Agreement subjecting City to penalties up to and including suspension or termination of this Agreement. A breach of the warranty of compliance with State and Federal Immigration Laws shall further make City liable to County for any additional costs attributable directly or indirectly to remedial action under this subsection.

County may, at any time, inspect City's books and records in order to verify City's compliance with the State and Federal Immigration Laws.

30. **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.

31. **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 floods, earthquakes, acts of God, or orders of any regulatory government officer or court (excluding orders promulgated by the parties themselves), which, by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Any party rendered unable to fulfill any obligations by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

32. **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:

City of Tucson  
Director,  
Department of Transportation 201 N. Stone, 6th floor Tucson, Arizona 85701

Pima County  
Director,  
Department of Transportation 201 N. Stone, 4th floor Tucson, Arizona 85701

33. **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.

In Witness Whereof, County has caused this Agreement to be executed by the Chair of its Board of Supervisors, attested to by the Clerk of the Board, and the City has caused this Agreement to be executed by the Mayor upon resolution of the Mayor and Council and attested to by its Clerk.

PIMA COUNTY:

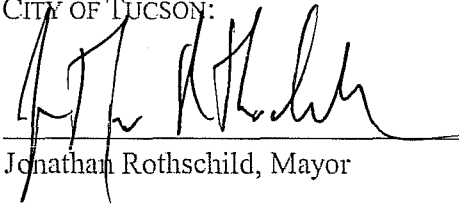
\_\_\_\_\_  
Sharon Bronson, Chair  
Board of Supervisors

\_\_\_\_\_  
Date

ATTEST:


\_\_\_\_\_  
Clerk of the Board

CITY OF TUCSON:

  
Jonathan Rothschild, Mayor

\_\_\_\_\_  
March 21, 2017  
Date

ATTEST:

  
\_\_\_\_\_  
City Clerk

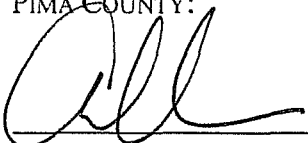
\_\_\_\_\_  
March 21, 2017



## Intergovernmental Agreement Determination

The foregoing Intergovernmental Agreement between Pima County and the City of Tucson 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 Intergovernmental Agreement represented by the undersigned.

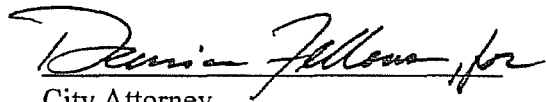
PIMA COUNTY:



Deputy County Attorney

**ANDREW FLAGG**

CITY OF TUCSON:



City Attorney

## Exhibit A - Page 1 of 2

Memorandum of Understanding  
Between the Mayor of the City of Tucson and the  
Chairperson of the Pima County Board of Supervisors  
in Their Individual Official Capacities

for

1997 Pima County Transportation Bond Program  
Remaining Projects Within the City Limits

Whereas, the voters of Pima County, including those in the City of Tucson, approved a County Transportation Highway User Revenue Bond proposal on November 4, 1997, and

Whereas, the election authorized County transportation improvements within the City of Tucson using County bond proceeds, and

Whereas, the City and County desire to expend authorized County Highway User Revenue Bonds to maximize mobility benefits for the residents of the City and County, and

Whereas, the City and County desire to work together on improving transportation throughout the City and County, and

Whereas, the Mayor of Tucson will ask that the City request the County to amend the 1997 Transportation Bond Implementation Plan as specified below,

Now, therefore, be it understood, that the Mayor of the City of Tucson and the Chairperson of the Pima County Board of Supervisors mutually agree to make every reasonable effort to ensure that the following projects are funded and implemented utilizing bonding authority approved by voters in 1997:

Project	Allocation of County HURF Bonds			Schedule*	Implementing Agency
1. Alvernon Way, Fort Lowell to River Rd	\$12M			Period I	County
2. Overpass at 22nd St and Kino Blvd	\$10M			Period I	City
3. Broadway Blvd, Euclid to Campbell	\$25M	Design, R/W Acquisition & Construction	\$11M \$14M	Period I Period II	City City
4. Valencia Rd, Mission Rd to I-19	\$6M			Period I	County
5. Country Club, 36th St to Milber	\$7M			Period I	County

\*Period I: Fiscal Years 2005-2009 (starting 7-01-04)

Period II: Fiscal Years 2010-2014

The Mayor agrees to make every reasonable effort to have the City fund the extension of improvements on Broadway from Campbell to Country Club in Period II (Estimated Cost \$25 million).

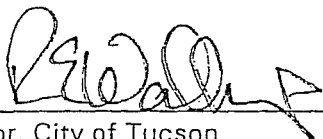
The Mayor and Chairperson also agree to make every reasonable effort to ensure the \$20 million from the 1997 bonds shall be used to assist with the improvement of Houghton Road from Golf Links to Interstate-10. Said amount is anticipated to be matched by impact fees collected by the City of Tucson and such other regional or state funds as may be secured/necessary to fully implement this project.

The Mayor acknowledges that the County shall retain appropriate controls over the actual disbursement/expenditure of the 1997 bond funds as required by law.

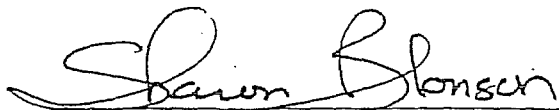
The Mayor acknowledges that the County continues to have responsibilities to implement transportation improvements throughout Pima County as a result of the successful 1997 Transportation Highway User Revenue bond election.

The Mayor acknowledges that State legislation to balance the State budget or other economic conditions affect the flow of County Highway User Revenue Funds necessary to support these bonds for City projects. The Chairperson agrees that every effort will be made to adhere to the project improvement schedules outlined above.

The Mayor and Chairperson acknowledge that additional actions may be necessary by each governing body to carry out the intent of this Memorandum of Understanding and each pledges to support these agreed upon principles when asking for further governing board approvals that may be necessary.



Mayor, City of Tucson



Chairperson, Pima County Board of Supervisors

Date: 5-7-2004

Date: 5-7-2004

Exhibit B - Page 1 of 2

Preliminary Legal Description for Road Map Proceedings No. 2984

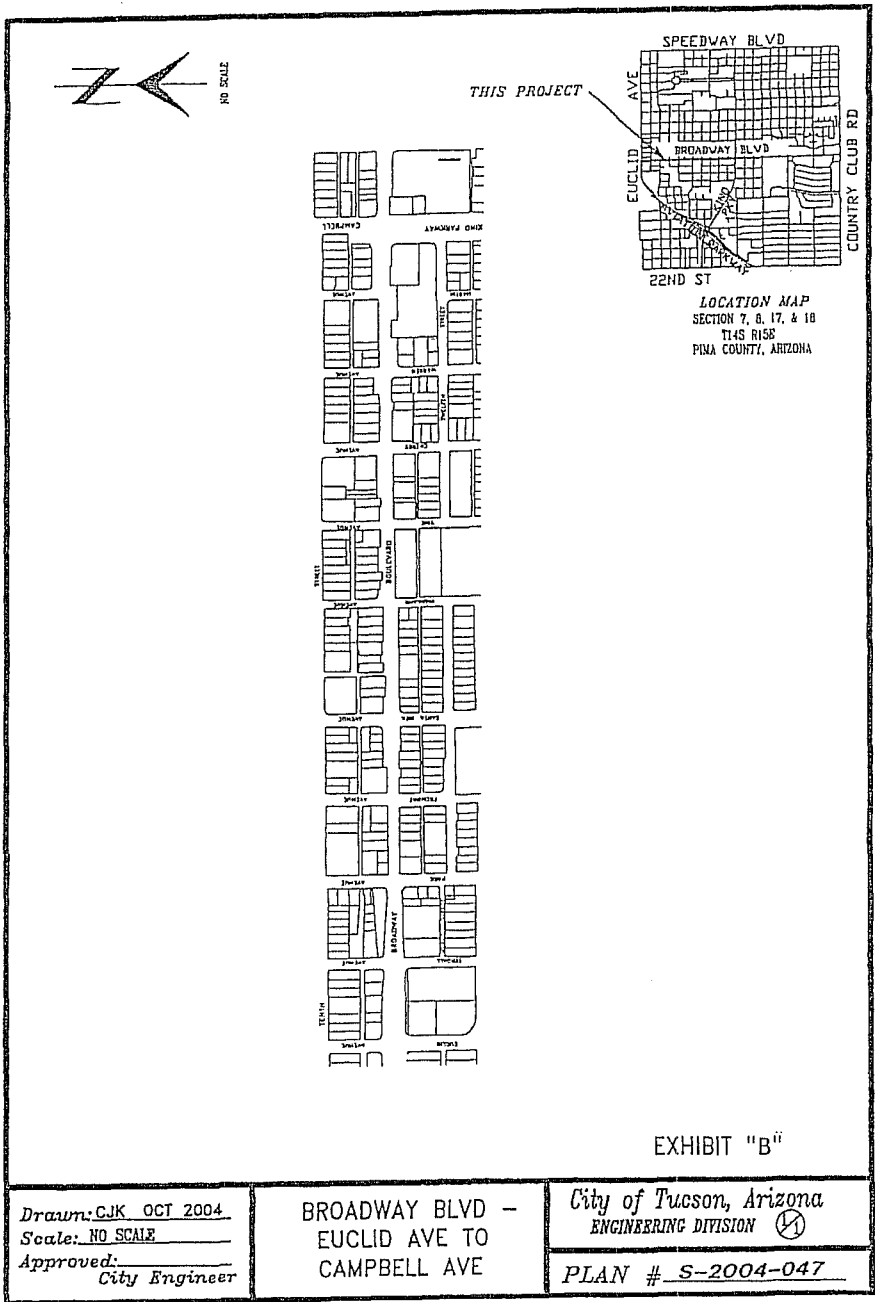
Broadway Boulevard

Broadway Boulevard, as shown as existing right-of-way on the City of Tucson City Engineer's Plan No. R-89-05, also known as the *BROADWAY CORRIDOR STUDY*, on file in Maps and Records in the Office of said City Engineer, from 500 feet westerly of the centerline of the intersection of Broadway Boulevard and Euclid Avenue, to 500 feet easterly of the centerline of the intersection of Broadway Boulevard and Campbell Avenue, lying within Sections 7, 8, 17, and 18, T. 14 S., R. 14 E., Gila and Salt River Meridian, State of Arizona, County of Pima.



Exhibit B to Exhibit 1 to Resolution 22723

S-2004-047

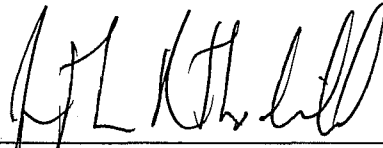


# PETITION FOR ESTABLISHMENT OF COUNTY HIGHWAY

TO: The Board of Supervisors of Pima County, Arizona:

The City of Tucson, by and through its Mayor and Council, respectfully petitions that, pursuant to A.R.S. § 28-6701(B), the Board of Supervisors establish and declare as a County Highway the roads described in the attached Exhibit C.

Dated this 21 day of March, 2017



---

Jonathan Rothschild, Mayor

ATTEST:



City Clerk

EXHIBIT 'C'

**BROADWAY BOULEVARD RIGHT-OF-WAY:  
CAMPBELL AVENUE to COUNTRY CLUB ROAD**

Broadway Boulevard, as shown as existing right-of-way on the City of Tucson City Engineer's Plan No. R-2015-002, also known as BROADWAY BOULEVARD, EUCLID AVENUE TO COUNTRY CLUB ROAD – RECORD OF SURVEY (Project Number SR3A), on file in Maps and Records in the Office of said City Engineer, from 500 feet westerly of the center line of the intersection of Broadway Boulevard and Campbell Avenue, to 500 feet easterly of the center line of the intersection of Broadway Boulevard and Country Club Road, and lying within Sections 7, 8, 9, 16, 17 & 18, T14S, R14E, Gila and Salt River Meridian, Pima County, Arizona.

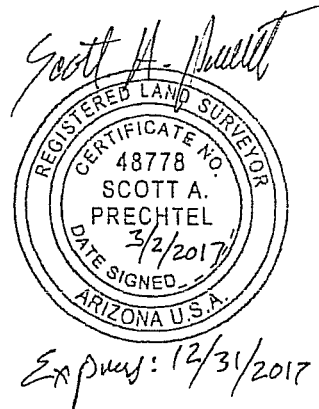
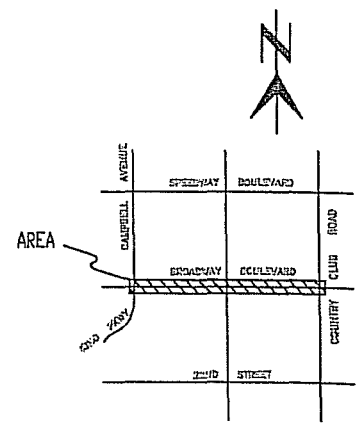
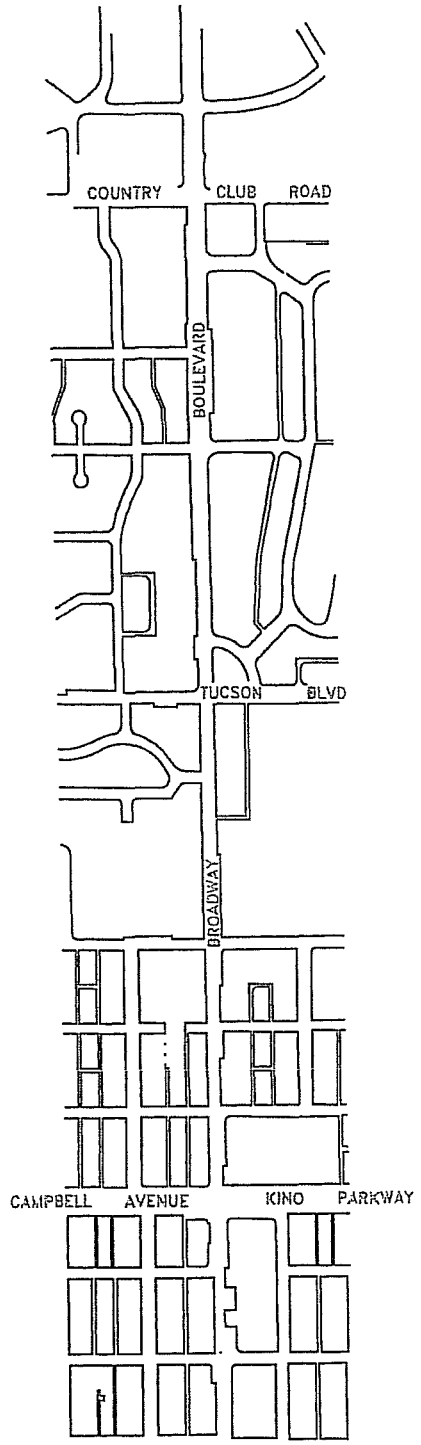
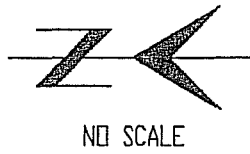
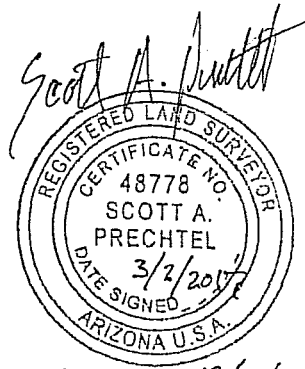


EXHIBIT 'C'



SITE MAP  
Scale: 1"=1Mile



Expires: 12/31/2017

BROADWAY BOULEVARD:  
CAMPBELL AVE TO COUNTRY CLUB RD

BROADWAY BOULEVARD:  
SECTIONS 7, 8, 9, 16,  
17 & 18, T14S, R14E

City of Tucson, Arizona  
ENGINEERING DIVISION

PLAN # S-2017-001

Drawn: SAP MAR 2017  
Scale: NO SCALE  
Approved: \_\_\_\_\_  
City Engineer

C:\Jobs\EXHIBIT C.dwg