



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

Award Contract Grant

Requested Board Meeting Date: September 5, 2017

* = Mandatory, information must be provided

or Procurement Director Award

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

Regional Transportation Authority (RTA)

***Project Title/Description:**

Design and Construction of Improvements as part of the project known as Pima County School Safety: White-Pistor

***Purpose:**

Intergovernmental Agreement with RTA to provide project funding.

***Procurement Method:**

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

***Program Goals/Predicted Outcomes:**

Providing ADA Compliant sidewalks around and between White Elementary and Pistor Middle Schools.

***Public Benefit:**

Provides off-street pathway for pedestrians, enhancing the safety of school children traveling to and from school.

***Metrics Available to Measure Performance:**

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

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

***Retroactive:**

No

*To: COB 8-11-17 (2)
Vers.: 1
Pgs.:*

Invoice Sept 08/11/17 PM0152

Contract / Award Information

Document Type: CTN Department Code: TR Contract Number (i.e., 15-123): 18*20

Effective Date: 9/5/2017 Termination Date: 12/31/20 Prior Contract Number (Synergen/CMS): _____

Expense Amount: \$* _____ Revenue Amount: \$ 77,000

***Funding Source(s) required:**

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

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

***Is the Contract to a vendor or subrecipient?** _____

Were insurance or indemnity clauses modified? Yes No

If Yes, attach Risk's approval

Vendor is using a Social Security Number? Yes No

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

Amendment / Revised Award Information

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

Amendment No.: _____ AMS Version No.: _____

Effective Date: _____ New Termination Date: _____

Prior Contract No. (Synergen/CMS): _____

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

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

***Funding Source(s) required:**

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

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

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

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

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

***All Funding Source(s) required:**

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

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

*Funding Source: _____

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

Contact: Mandley Rust, Project Manager

Department: Transportation Telephone: 724-9982

Department Director Signature/Date: [Signature] 8/10/17

Deputy County Administrator Signature/Date: [Signature] 8/11/17

County Administrator Signature/Date: [Signature] 8/11/17
(Required for Board Agenda/Addendum Items)

CONTRACT	
NO.	<u>CTN-TR-18-020</u>
AMENDMENT NO.	_____
This number must appear on all invoices, correspondence and documents pertaining to this contract.	

**INTERGOVERNMENTAL TRANSPORTATION FUNDING AGREEMENT
BETWEEN
THE REGIONAL TRANSPORTATION AUTHORITY OF PIMA COUNTY
AND
PIMA COUNTY
FOR
DESIGN AND CONSTRUCTION OF IMPROVEMENTS TO
PIMA COUNTY SCHOOL SAFETY: WHITE-PISTOR**

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

RECITALS

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

- G. The Lead Agency is authorized by A.R.S. § 11-251 (4) or A.R.S. § 9-240 (A) (3) to design, maintain, control and manage public roads within the Lead Agency's jurisdictional boundaries.
- H. The Lead Agency may have a legal contract with one or more jurisdictions within Pima County empowering the Lead Agency to perform roadway and other improvements outside the Lead Agency's jurisdictional boundaries.
- I. The Lead Agency, with funding from the Authority, wishes to undertake the design and construction of improvements as part of the project known as 'Pima County School Safety: White-Pistor' ("the Project").
- J. The Project is one of the transportation projects included in the Plan or is eligible for funding as part of a categorical program included in the Plan.
- K. The Authority intends to fund the Project under the terms and conditions contained in this Agreement and has entered into this Agreement for that purpose.
- L. It is the policy of the Authority to require that a lead agency be identified and an intergovernmental agreement (IGA) be approved and entered into by the Authority and the lead agency before requests for funding reimbursement or payment can be processed by the Authority.
- M. Pima County has been identified as the Lead Agency for the Project and will be responsible for all aspects of project implementation including, but not limited to, planning, project management, risk management, design, right of way acquisition and construction, advertisement, award, execution and administration of the design and construction contracts for the Project. The Authority's role is limited to providing financial support to the Lead Agency for the Project, as described herein.
- N. The RTA's Administrative Code will control all payments and other procedures unless otherwise specified herein.
- O. The Authority and the Lead Agency may contract for services and enter into agreements with one another for joint and cooperative action pursuant to A.R.S. § 11-951, et seq.

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

AGREEMENT

1. Purpose. The purpose of this Agreement is to set forth the responsibilities of the parties for the design, construction, maintenance and operation of the Project and to address the legal and administrative matters among the parties.

2. Project. The Project consists of installing sidewalks, curb and curb ramps to provide continuous ADA complaint sidewalks, as more fully depicted in the attached Exhibit A, including the following:

- a) Detailed project scope and schedule.

- b) Project budget and cost breakdown of items eligible for reimbursement by the Authority including any proposed billing of staff time directly attributable to Project.
- c) Total amount of RTA funding allowed for the Project plus a breakdown of any other regional, local, federal or state funding available.
- d) Designation of Project phases, if applicable, and any additional related agreements.
- e) Estimated construction start date and duration of construction.
- f) Projected timeline.
- g) Identification of the Lead Agency's duly authorized representative for signing and submitting payment requests.

3. Effective Date; Term. This Agreement shall become effective upon its execution by both parties, and shall continue in effect until all improvements constructed pursuant to this Agreement are completed, all eligible reimbursement payments to the Lead Agency are concluded, and all warranties applicable to the Project have expired.

4. Responsibilities of the Lead Agency.

- a. The Lead Agency shall be responsible for the design, construction and/or installation of the Project in accordance with this Agreement and all applicable public roadway, traffic signal, and street lighting design and construction standards. Design Standards are federal, state, county or municipal standards for engineering, traffic, safety or public works facilities design. Examples of Design Standards include 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, the Pima County Roadway Design Manual, the Pima County Department of Transportation /City of Tucson Department of Transportation Pavement Marking Design Manual, and Pima County and municipal design guidelines for roadway lane widths and level of drainage protection.
- b. If consultants or contractors are employed to perform any portion of the Project, the Lead Agency shall be responsible for the contracts for design and construction of the Project and shall select the consultants and contractors to be used on the Project. The Lead Agency shall immediately provide to the Authority copies of any and all contract documents and related materials upon request by the Authority. The Lead Agency shall retain the usual rights of the owner of a public contract including the authority to approve changes and make payments. However, any changes to the Project which would result in the final project cost deviating, by ten or more percent, from the Authority's budget amount for the Project, must be approved by the Authority in advance of those changes being made, regardless of the fact that the Authority will not be paying for them.
- c. The Lead Agency shall be responsible for all traffic management and public safety, including public notification, during construction of the Project.
- d. The Lead Agency shall operate and maintain the improvements during and after completion of construction.

- e. The final cost of the Project shall be that amount necessary to complete the Project including any unanticipated work incorporated into the Project by change orders and amendments executed by the Lead Agency. The Lead Agency shall be responsible for all Project costs in excess of the RTA funds contributed to the Project.
- f. The Lead Agency shall exercise its power of eminent domain, if necessary, to acquire property needed for the Project.
- g. Inasmuch as the RTA's role is limited to Project funding, the Lead Agency agrees, to the fullest extent permitted by Arizona law, to indemnify, defend, and hold harmless the RTA and its Board and officers, from, for, and against, any and all claims, demands, damages, liabilities or penalties, brought by or on behalf of any persons or entities, arising out of the Lead Agency's activities in performance of its obligations under this Agreement or use of RTA's resources, as described herein, regardless of how such claims are worded or styled, and regardless of the specific cause of action or type of claim asserted. This subsection shall survive termination of this Agreement.
- h. The Lead Agency shall require its contractors performing any portion of the Project to name the Authority as additional insured and additional indemnitee with respect to insurance policies for general liability, automobile liability and defects in design in all of the Lead Agency's contracts for the Project. The Lead Agency shall also require its contractors to name the Authority as an additional beneficiary in any performance and payment related assurances posted for the Project.
- i. Monthly, the Lead Agency shall be responsible for preparing and submitting to the Authority reimbursement requests (invoices). Said requests shall be signed by a duly authorized representative of the Lead Agency and shall include sufficient background information documenting payments made to contractors, vendors or any other eligible costs identified in this Agreement or the RTA's Administrative Code. The Lead Agency must retain and certify all vendor receipts, invoices and any related Project records as needed and ensure that they are available for review for a minimum of five (5) years after final payment is made unless otherwise specified herein.
- j. The Lead Agency shall be responsible for submitting a status report describing its progress and adherence to the Project scope, schedule and budget. Progress reports shall be submitted to the RTA monthly.
- k. The Lead Agency shall adhere to the RTA Administrative Code, including the requirements for a Project Charter (where applicable), a Project Closeout Meeting (Roadway Element Projects) and reimbursement limits.
- l. Prior to any construction bid solicitation, the Lead Agency shall provide a complete set of Project documents to the RTA, including all plans and specifications, the engineer's cost estimate, and a listing of all funding sources. The Project may not be advertised prior to written confirmation from the RTA that the Project is compliant with RTA requirements, and that funding is available for the Project.
- m. All right of way remnants from properties acquired with Project funds shall be disposed of in accordance with RTA Policy. All proceeds from the disposal shall be returned to

the RTA for expenditure on RTA eligible expenses. In the event the disposal of the property occurs after the Project is completed, the funds shall be returned to the RTA for reallocation to other projects. This subsection shall survive termination of this Agreement.

5. Responsibilities of Authority.

- a. Upon receipt of reimbursement requests, the Authority shall convey to the Lead Agency RTA funds in the amount specified in the Exhibits, on a reimbursement basis, unless otherwise specified herein. All payments and reimbursements shall follow the policies outlined in the RTA's Administrative Code.
- b. Reimbursements will generally be based on the Project schedules established by the Lead Agency and contained in the Exhibits.
- c. The RTA staff will review all payment requests to confirm that the request is for reimbursement of costs incurred by the Lead Agency for the Project. If the Authority determines that additional information is needed, the Lead Agency will be notified of the request for additional information within five business days of the receipt of the invoice by RTA.
- d. Upon approval of the request by RTA, the invoice will be processed for payment within thirty days of the invoice being accepted as complete.
- e. RTA shall provide all necessary cooperation and assistance to its fiscal agent to process all payment requests from the Lead Agency.

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

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

8. Construction of Agreement.

- a. Entire agreement. This instrument constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. Any exhibits and the Recitals to this Agreement are incorporated herein by this reference.
- b. Amendment. This Agreement may be modified, amended, altered or changed only by written agreement signed by both parties.
- c. 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 the Agreement are severable. In the event that any provision of this Agreement is declared invalid or void, the parties agree to meet promptly upon request of the other party in an attempt to reach an agreement on a substitute provision.
- f. This Agreement is subject to cancellation pursuant to the provisions of A.R.S. § 38-511.

9. Ownership of Improvements. Ownership and title to all materials, equipment and appurtenances installed pursuant to this Agreement shall automatically vest in the Lead Agency upon completion of the Project.

10. Legal Jurisdiction. Nothing in this Agreement shall be construed as either limiting or extending the legal jurisdiction of the Lead Agency or the Authority.

11. No Joint Venture. It is not intended by this Agreement to, and nothing contained in this Agreement shall be construed to, create any partnership, joint venture or employment relationship between the parties or create any employer-employee relationship between the Lead Agency and any Authority employees, or between Authority and any Lead Agency 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.

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

13. 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.** Neither party shall discriminate against any employee or client of either party or any other individual in any way because of that person's age, race, creed, color, religion, sex, sexual orientation, familial status, political affiliation, disability or national origin in the course of carrying out the duties pursuant to this IGA. Both parties shall comply with applicable provisions of Executive Order 75-5, as amended by Executive Order 2009-09 of the Governor of Arizona, which are incorporated into this IGA by reference as if set forth in full herein, including the provisions of A.R.S. § 41-1463.

b. **Americans with Disabilities Act.** This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36, as well as the Genetic Information Nondiscrimination Act of 2008.

c. **Workers' Compensation.** An employee of either party shall be deemed to be an "employee" of both public agencies, while performing pursuant to this Agreement, for purposes of A.R.S. ' 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers' compensation benefits, which may accrue. Each party shall 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.

14. 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.

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

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

The Authority:
Mr. Farhad Moghimi, Executive Director
Pima Association of Governments
1 E. Broadway, Ste. 401
Tucson, AZ 85701

Pima County:
Priscilla S. Cornelio, P.E., Director
Pima County Transportation
201 N. Stone, 4th Floor
Tucson, AZ 85701

17. 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.

18. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterpart may be removed from such counterpart and attached to a single instrument.

In Witness Whereof, Pima County has caused this Agreement to be executed by the _____, upon resolution of the _____ attested to by the _____, and the Authority has caused this Agreement to be executed by its Chair of the Board.

Regional Transportation Authority of Pima County

Board Chair

Date

Pima County Board of Supervisors

Chair

Date


ATTEST:

Clerk of the Board

Date

The foregoing Agreement between Pima County and the Authority has been approved as to content and is hereby recommended by the undersigned.

Mr. Farhad Moghimi, Executive Director



Priscilla S. Cornelio, P.E., Director

ATTORNEY CERTIFICATION

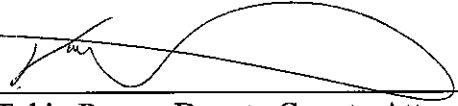
The foregoing Agreement by and between the Regional Transportation Authority of Pima County and Pima County has been reviewed pursuant to A.R.S. Section 11-952 by the undersigned who have determined that it is in proper form and is within the powers and authority granted under the laws of the State of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

Regional Transportation Authority of Pima County:

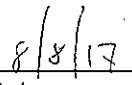
Thomas Benavidez, Attorney for the Authority

Date

Pima County Attorney:



Tobin Rosen, Deputy County Attorney



Date