



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

Requested Board Meeting Date: March 15, 2016

or Procurement Director Award ☐

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

**Project Title/Description:**

El Paso Southwestern Greenway, City of South Tucson Segment Improvement Project

**Purpose:**

This no-cost agreement establishes responsibilities and allows Pima County to provide project management services to the City of South Tucson to complete the portion of the El Paso Southwestern Greenway within the City of South Tucson. The project is funded by the RTA via a separate Intergovernmental Agreement, CTN 15-149.

**Procurement Method:**

IGA - exempt

**Program Goals/Predicted Outcomes:**

The goal is to provide services to build the portion of the Greenway from 29th Street to 11th Avenue as part of the RTA Economic & Environmental Vitality Element program. The El Paso Southwestern Greenway is a multi-jurisdictional greenway that includes Pima County, ADOT, City of Tucson, and the City of South Tucson. The portion described in this agreement will provide connectivity within the City of South Tucson.

**Public Benefit:**

The public will have an alternate transportation multi-use pathway developed as part of a greater greenway master plan.

**Metrics Available to Measure Performance:**

This project's success will be measured against the original project charter and project, as defined by the RTA, to stay within scope, schedule and budget.

**Retroactive:**

No.

To: CoB. 3-2-16 - (3)

Ver. - 1

Pgs. - 9

Procure Dept 02/19/16 11:06

**Original Information**

Document Type: CTN Department Code: TR Contract Number (i.e., 15-123): 16-117  
Effective Date: 3/15/2016 Termination Date: 12/31/2017 Prior Contract Number (Synergen/CMS): \_\_\_\_\_  
☐ Expense Amount: \$ \_\_\_\_\_ ☐ Revenue Amount: \$ \_\_\_\_\_  
Funding Source(s): This is a no cost agreement. The project is funded by the RTA via a separate contract,  
CTN 15-149.

Cost to Pima County General Fund: \$0

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: \_\_\_\_\_ 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: Nancy Cole

Department: Public Works Administration, Project Management Office Telephone: 724-6312

Department Director Signature/Date: M. Cooper 2/18/16

Deputy County Administrator Signature/Date: W. Bernal 2/18/16

County Administrator Signature/Date:  
(Required for Board Agenda/Addendum Items)

C. A. Delaney 2/19/16



**CITY OF SOUTH TUCSON RESOLUTION NO: 16-05**

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**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SOUTH TUCSON, ARIZONA, APPROVING THE INTERGOVERNMENTAL AGREEMENT [IGA] BETWEEN PIMA COUNTY [COUNTY], AND THE CITY OF SOUTH TUCSON REGARDING THE PLANNING, DESIGN, AND IMPLEMENTATION OF THE EL PASO AND SOUTHWESTERN GREENWAY AND DECLARING AN EMERGENCY TO EXIST**

**WHEREAS**, The El Paso & Southwestern Greenway is documented in the City of Tucson Parks and Recreation Strategic Plan, the City of Tucson General Plan, the Downtown Infrastructure Plan, the Regional Transportation Authority's transportation plan, the Eastern Pima County Trails Master Plan and the Parks, Open Space and Trails plan and the Regional Bicycle Plan; and

**WHEREAS**, a Master Plan for the Greenway was completed in 2012; and

**WHEREAS**, the Parties mutually agree that the El Paso & Southwestern Greenway is an outstanding project with exceptional potential to improve the community and the Parties desire to implement the project as quickly as practicable; and

**WHEREAS**, the Parties wish to cooperate with each other for the planning, design and construction of the Project. The City and the County 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.; and

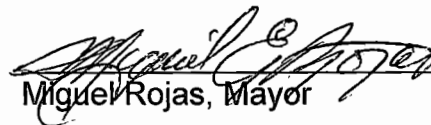
**WHEREAS**, the Mayor and Council of the City of South Tucson have determined that it is in the best interest of the City and its citizens to enter into a cooperative IGA with the County; and

**WHEREAS**, it is necessary for the preservation of the peace, health, and safety of the City of South Tucson, Arizona, that an emergency be declared to exist, and that this Resolution be effective immediately upon its passage and adoption.

**THEREFORE, BE IT RESOLVED** by the Mayor and Council of the City of South Tucson, Arizona, that the City hereby formally approves the IGA between the Parties and empowers the Mayor of the City of South Tucson to execute same.

**BE IT FURTHER RESOLVED** by the Mayor and Council of the City of South Tucson, Arizona, that, due to an existing emergency declared herein, the immediate effectiveness of this Resolution is necessary to preserve the peace, health, and safety of the City of South Tucson, Arizona, and this Resolution shall therefore be effective upon its passage and adoption.


**PASSED AND ADOPTED** by the Mayor and Council of the City of South Tucson, Arizona, this 1st day of February, 2016.

  
Miguel Rojas, Mayor

ATTEST:

  
Veronica Moreno, City Clerk

APPROVED AS TO FORM:

  
Mark Raven, City Attorney



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

**Intergovernmental Agreement  
between  
Pima County and the City of South Tucson  
for the  
El Paso Southwestern Greenway, City of South Tucson Segment  
Improvement Project, RTA Economic & Environmental Vitality Element #41**

This Intergovernmental Agreement ("Agreement") is entered into by Pima County, a political subdivision and body politic of the State of Arizona ("County"); and the City of South Tucson, a municipal corporation of the State of Arizona ("City"); pursuant to Arizona Revised Statutes section A.R.S. § 11-952. The City and the County are collectively referred to in this Agreement as "the Parties" and either may be individually referred to as a "Party."

**Recitals**

- A. Pima County ("County") is authorized by A.R.S. § 11-251(4) and A.R.S. §§ 28-6701 et seq. to lay out, maintain, control, and manage public roads and to establish, construct, alter, and maintain county highways within Pima County, and by A.R.S. § 11-932 to acquire real property for, construct, own, and operate, public parks.
- B. The City of South Tucson ("City") is authorized by A.R.S. § 9-276 to lay out and establish, regulate the use, open, vacate, alter, widen, extend, grade, pave, plant trees or otherwise improve streets, alleys, avenues, sidewalks, parks, public grounds and off-street parking sites and acquire any property necessary or convenient for that purpose by the exercise of the right of eminent domain.
- C. The City and County wish to cooperate in the construction of roadway and recreational improvements for the El Paso Southwestern Greenway, City of South Tucson portion Project ("the Project").
- D. The Project lies within the jurisdictional limits of the City, wholly within Pima County.
- E. Pima County has been identified as the Lead Agency ("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, construction, service delivery and operation, administration, advertisement, award, execution and administration of the Project.
- F. The City and County find it prudent to enter into an intergovernmental agreement for the purpose of providing project management resources for the construction of the Project.
- G. The Regional Transportation Authority ("RTA") is funding the Project in the amount of \$600,000 under separate IGA with the County. At this time, no additional funding is

anticipated, however the City of South Tucson may pursue additional sources.

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

### **AGREEMENT**

**1. Purpose.** The purpose of this Agreement is to set forth the responsibilities of the City and County for the funding and implementation of the Project.

**2. Project.** The Project consists of planning, design, development, and construction activities for a new multi-use pathway from 29<sup>th</sup> Street to 11<sup>th</sup> Avenue as a part of the El Paso Southwestern Greenway within the City of South Tucson, which is a portion of the project identified as part of the Economic & Environmental Vitality #41 in the Regional Transportation Authority's Regional Transportation Plan.

**3. City Contribution.** The City is not currently scheduled to fund any of the improvements related to the Project. If the City finds additional funds to enhance or enlarge the scope of work of the Project, then this IGA may be amended, on mutual agreement of the parties, to allow those funds to be used toward any approved, expanded or enlarged scope of work. If additional RTA funding is allocated, this may be coordinated via a separate IGA between the RTA and the County.

**4. Permits.** The City shall grant the County and its Contractors right of way use permits allowing full accessibility to perform the work as described. These permits shall be granted at no cost to the Project.

**5. County Responsibility; Changes; Disputes.** As Lead Agency for the Project, the County will have responsibility for Project oversight, including administration of the design and construction contracts. This includes responsibility for verification of quantities, quality of workmanship, contract change orders, and Project modifications as necessary. The County shall coordinate design plans for the Project with input from the City. The County will advertise and start Project construction activities during FY 2016 and thereafter will diligently pursue the Project to completion. The County will exercise due diligence to consult with the City on items and issues as they arise so that the City has ample opportunity to provide input. In the event that there is a disagreement over any Project elements, the issue shall be escalated as appropriate. In the event that the disagreement remains unresolved, the County will retain the final decision making authority.

**6. Ownership of Improvements.** Upon completion of the Project, ownership of all Project improvements located in the limits of the City of South Tucson shall automatically vest in the City. The City shall maintain the elements of the Project along the existing 29<sup>th</sup> Street and 11<sup>th</sup> Avenue right of way, including any traffic signals installed by the Project.

## **7. Effective Date and Term**

- a. This Agreement shall be effective on the date it is signed by the last Party to sign this Agreement.
- b. This Agreement shall remain in effect through completion of the Project and completion of all payments required under this Agreement.

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

**9. 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 employer-employee relationship between County and City. No Party shall be liable for any debts, accounts, obligations nor other liabilities whatsoever of the other Party as a result of this Agreement, including (without limitation) any party's obligation to withhold Social Security and income taxes for itself or its employees.

**10. No Third Party Beneficiaries.** This Agreement shall not create any right to any person or entity as a third party beneficiary.

**11. 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. The laws and regulations of the State of Arizona shall govern the rights of the Parties, the performance of this Agreement and any disputes hereunder. Any action relating to this Agreement shall be brought in an Arizona court.

- a. *Anti-Discrimination.* The provisions of A.R.S. § 41-1463 and Executive Order Number 99-4, as modified by Executive Order Number 2009-9, issued by the Governor of the State of Arizona are incorporated by this reference as a part of this Agreement.
- b. *Americans with Disabilities Act.* This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. §. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.

**12. 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 Party itself), which, by exercise of due diligence and foresight, such Party could not reasonably have been expected to avoid. A Party rendered unable to fulfill any obligations by reason of uncontrollable forces shall exercise due diligence to

remove such inability with all reasonable dispatch.

**13. 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.

**14. Termination.**

- a. For cause. 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 a Party from liabilities or costs already incurred under this Agreement.
- b. A.R.S. § 38-511. This Agreement may be terminated pursuant to A.R.S. § 38-511 in certain instances involving conflict of interest.
- c. Non-appropriation. It is acknowledged that, notwithstanding any other provision contained herein, this Agreement may be terminated if for any reason the Pima County Board of Supervisors or the City of South Tucson Mayor and Council fails to appropriate sufficient monies for the purpose of maintaining this Agreement. In the event of such cancellation, the County and the City shall have no further obligation to each other, other than for payment for services rendered prior to such termination.
- d. Ownership of property upon termination. Any termination of this Agreement shall not relieve a Party from liabilities or costs already incurred under this Agreement, nor affect any ownership of the Project constructed pursuant to this Agreement.

**15. 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 boards or bodies, officers, departments, employees and agents, harmless from and against any and all suits, actions, legal or administrative proceedings, claims, demands, liens, losses, fines or penalties, damages, liability, interest, attorney's, consultant's and accountant's fees or costs and expenses of whatsoever kind and nature, resulting from or arising out of any act or omission of the indemnifying party, its agents, employees or anyone acting under its direction or control, whether intentional, negligent, grossly negligent, or amounting to a breach of contract, in connection with or incident to the performance of this Agreement.



- b. *Notice.* Each Party shall notify the other Party 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 seek indemnification from the other Party pursuant to this paragraph. Each Party shall keep the other Party informed on a current basis of its defense of any claims, demands, suits, or judgments relating to this Agreement.
- c. *Negligence of indemnified Party.* The obligations under this paragraph 15 shall not extend to the negligence of an indemnified Party, its agents or employees.
- d. *Survival of termination.* This paragraph 15 shall survive the termination, cancellation or revocation, whether in whole or in part, of this Agreement.

**16. Insurance.** Each Party warrants that it maintains self-insurance or other insurance covering that Party's liability regarding the Project.

**17. 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 the other Party at all reasonable times. All design and construction drawings, records, documentation and correspondence shall be the property of the County at the completion of the Project. Within six months after acceptance of the Project by the City and County, the County shall provide, at no cost to the City, As-Built original drawings of the Project.

**18. Inspection and Audit of Records.** The appropriate designated representatives of a Party may perform any inspection of the Project or reasonable audit of any books or records of the other Party to satisfy itself that the monies on the Project have been spent and the Project operated and maintained in accordance with this Agreement.

**19. Severability.** In the event that any provision of the Agreement or the application thereof is held invalid, such invalidity shall have no effect on other provisions and their application which can be given effect without the invalid provision, or application, and to this extent the provisions of the Agreement are severable.

**20. Notification.** All notices or demands upon a Party to this Agreement shall be in writing, unless other forms are specifically authorized by this Agreement, and shall be delivered in person or sent by mail addressed as follows:

**City of South Tucson:**

Veronica Moreno  
City of South Tucson  
1601 S. 6<sup>th</sup> Avenue  
South Tucson, Arizona 85713

**Pima County:**

Nanette Slusser

Pima County Public Works Administration  
130 W. Congress, Floor 10  
Tucson, Arizona 85701

Notices shall be deemed delivered and received on the date of delivery, if delivered in person, or on the third business day after mailing, if delivered by any form of mail.

Any party may, by written notice to the other parties, designate another address or person for receipt of notices under this Agreement.

*IN WITNESS WHEREOF*, the City has caused this Agreement to be executed by the Mayor, upon resolution of the Mayor and Council and attested to by the City Clerk; and the County has caused this Agreement to be executed by the Chair of its Board of Supervisors, upon resolution of the Board and attested to by the Clerk of the Board.

WHEREFORE, the Parties have entered into this Agreement on the last Party's signature date below.

**PIMA COUNTY:**

\_\_\_\_\_  
Chair, Board of Supervisors

\_\_\_\_\_  
Date

ATTEST:

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

**CITY OF SOUTH TUCSON:**

  
\_\_\_\_\_  
Mayor of South Tucson

\_\_\_\_\_  
Date

ATTEST:

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

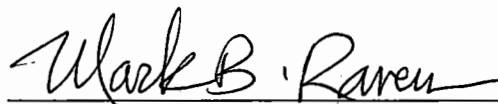
## Intergovernmental Agreement Determination

The foregoing Intergovernmental Agreement between Pima County and the City of South 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 **ANDREW FLAGG**

South Tucson:

  
City Attorney