



Contract Number: CT-PW-13*868
Effective Date: 7.2.13
Term Date: 7.2.2038
Cost: ✓
Revenue: ✓
Total: ✓ NTE: ✓
Action: 4.1.2038
Renewal By: 7.2.2031
Term: 7.2.2031
Reviewed by: JS

BOARD OF SUPERVISORS AGENDA ITEM SUMMARY

Requested Board Meeting Date: 7/2/2013 Addendum

ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:

This is an Intergovernmental Agreement (IGA) between Pima County and the City of Tucson to establish responsibilities and address legal considerations for the design, construction, maintenance, and operation of the Broadway Underpass at the Pantano Riverpath East Bank Shared-Use Parkway.

Pima County will design and construct The Loop's Pantano Riverpath east bank segment between Broadway Boulevard and Kenyon Drive, including an underpass at Broadway. This project is a key factor to separating shared-path users—pedestrians, cyclists and others using non-motorized vehicles—from the Broadway Boulevard vehicular traffic. Construction is scheduled to begin on or before March 2014 with an estimated completion within six months after construction start.

Under a separate IGA (CTN-TR-13*251), the Regional Transportation Authority (RTA) will fund this project in the amount of \$1,956,000.00, as the RTA-41, Environmental and Economic Vitality Element project.

CONTRACT NUMBER (If applicable): CT-PW-13*868

STAFF RECOMMENDATION(S): Staff recommends approval of IGA CT-PW-13*868-1.

To: CHH - 6.26.13 By Jdy
Cob - 6.27.13
Agenda - 7.2.13
Addendum (3)

Procure Dept 06/26/13 PM 04:56

CLERK OF BOARD USE ONLY: BOS MTG. _____

ITEM NO. _____

PIMA COUNTY COST: \$0.00 and/or REVENUE TO PIMA COUNTY: \$ 0.00

FUNDING SOURCE(S): Regional Transportation Authority Pantano Riverpath, Broadway
Blvd-Kenyon Dr. Project, RTA #41, Task Order 1300464140
(i.e. General Fund, State Grant Fund, Federal Fund, Stadium D. Fund, etc.)

Advertised Public Hearing:

		YES	X	NO
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Board of Supervisors District:

1		2	X	3		4	X	5		All	
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IMPACT:

IF APPROVED: Pima County will establish joint responsibilities with the City of Tucson to design and construct the Pantano Riverpath project, as approved and funded by the RTA. Once complete, the Pantano Riverpath will be a continuous path from Speedway Boulevard to Harrison Road to Irvington Road. Pathway users (e.g., pedestrians, bicyclists) can avoid roadway vehicular traffic near these areas.

IF DENIED: Pima County will not satisfy terms or receive \$1.956 million in funding as depicted in the RTA agreement (CTN-TR-13*251) approved on March 19, 2013. Pima County will return funding to the RTA, and the gap on this portion of The Loop will continue to exist.

DEPARTMENT NAME: Public Works Administration 

CONTACT PERSON: Nancy Cole/Lisa Matthews TELEPHONE NO.: 724-6312 / 724-8396

ADOPTED BY THE
MAYOR AND COUNCIL

June 11, 2013

RESOLUTION NO. 22065

RELATING TO INTERGOVERNMENTAL AGREEMENTS; APPROVING THE INTERGOVERNMENTAL AGREEMENT BETWEEN PIMA COUNTY AND THE CITY OF TUCSON FOR THE BROADWAY UNDERPASS AT THE PANTANO RIVERPATH EAST BANK SHARED USE PARKWAY PROJECT; AND DECLARING AN EMERGENCY.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, AS FOLLOWS:

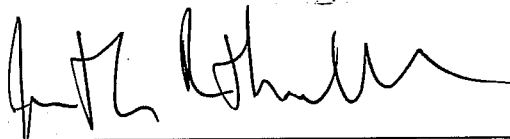
SECTION 1. The Intergovernmental Agreement between Pima County and the City of Tucson for the Broadway Underpass at the Pantano Riverpath East Bank Shared Use Parkway Project to construct the Pantano Riverpath segment between Broadway and Kenyon Drive, including a new underpass at Broadway, attached hereto as Exhibit "A," is approved.

SECTION 2. The Mayor is hereby authorized and directed to execute the said Intergovernmental Agreement for and on behalf of the City of Tucson and the City Clerk is directed to attest the same.


SECTION 3. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this Resolution.

SECTION 4. WHEREAS, it is necessary for the preservation of the peace, health, and safety of the City of Tucson that this Resolution become immediately effective, an emergency is hereby declared to exist and this Resolution shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Tucson, Arizona, June 11, 2013.



MAYOR

ATTEST:



CITY CLERK

APPROVED AS TO FORM:




CITY ATTORNEY

REVIEWED BY:



CITY MANAGER


DF:mgs
6/18/13

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

Intergovernmental Agreement

between

Pima County and the City of Tucson

for the

Broadway Underpass at the Pantano Riverpath East Bank Shared Use
Parkway Project

This Agreement is entered into by and between Pima County, a body politic and corporate of the State of Arizona ("County") and the City of Tucson, a municipal corporation ("City") pursuant to Arizona Revised Statutes (A.R.S.) Section 11-952.

Recitals

- A. County and City are authorized by A.R.S. § 11-932 to design and build parks.
- B. County and City wish to cooperate in the design and construction of the Broadway Underpass at the Pantano Riverpath East Bank Shared Use Parkway south to Kenyon Drive (the "Project"). County and City may contract for services and enter into agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-952.
- C. The Project is currently estimated to cost approximately One Million, Nine Hundred Fifty-Six Thousand Dollars (\$1,956,000), and will be designed and constructed by County using Regional Transportation Authority ("RTA") Funds.
- D. The funds for this project have been approved via an intergovernmental agreement ("IGA") between County and RTA dated March 28, 2013, Contract number 13-00251.
- E. County shall advertise, award, execute and administer the design and construction contracts for the Project and shall, after completion of the Project, operate and maintain it for the purposes described herein for at least twenty-five years.
- F. Construction of the Project is currently scheduled to commence on or before March 2014, subject to acquisition of all necessary permits, rights-of-way and environmental clearances, and is currently estimated to be completed approximately six months after the start of construction.

Exhibit A to Resolution No. 22065
City of Tucson Contract No. 17781

Agreement

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

1. **Purpose.** This Agreement sets forth the responsibilities of the parties for the design, construction, maintenance and operation of the Project and addresses legal and administrative matters among the parties.
2. **Project.** The Project consists of the design and construction of the Project as follows:

The project consists of right-of-way acquisition, design and construction of a divided urban path (where space allows) and an underpass at Broadway Boulevard along the Pantano Riverpath East Bank Shared Use Pathway as shown on Exhibit "A" to this Agreement.

3. **Design and Construction Responsibilities.** The County shall design and construct the Project in accordance with the plans and specifications cooperatively reviewed and approved by the parties, as described below.
 - a. *Standards.* County shall design and construct the Project in compliance with all applicable building standards and codes, in compliance with Title 34 of the Arizona Revised Statutes, and in a good and workmanlike manner.
 - b. *Public Art.* County shall manage the Pima County Public Art Program for the Project in compliance with the Pima County Board of Supervisors Policy C3.3 and Pima County Administrative Procedure 3-16.
 - c. *Environmental Compliance.* County shall prepare and incorporate into the planning, design, and construction of the Project, responses to all applicable local, state and federal environmental requirements, including but not limited to hydrologic and geotechnical investigations, compliance with the Pima County Native Plant Preservation Ordinance, protection of species identified by the Arizona Game & Fish Department and the U.S. Department of Fish and Wildlife Service as being endangered, threatened, or of concern (such as the cactus ferruginous pygmy-owl), and compliance with the National Pollution Discharge Elimination System (including preparation of a Storm Water Pollution Prevention Plan).

- d. *Cultural Resources.* County shall consider potential impacts to cultural and historical resources in the Project planning and design phases through inventory, evaluation and impact assessment, and seek to avoid impacts to these resources in accordance with applicable local, state, and federal historic preservation laws and regulations. If impacts are unavoidable, a mitigation treatment plan will be prepared in consultation with Pima County, the State Historic Preservation Office, and other agencies as appropriate, and implemented prior to construction.
4. **Project schedule.** County shall be responsible for the timing of the project delivery, and will coordinate schedule information with the City.
5. **Design.**
 - a. *Consultants.* If consultants are employed to design any portion of the Project, County shall prepare the contracts for design and choose the consultants. County shall have the usual rights of the owner of a public design contract, including the authority to approve changes and make payments. The timing for solicitation and award of design and consultant contracts shall be included in the Project Schedule.
 - b. *Design Standards and Features; Cooperation.* County and City shall meet to coordinate design standards (meaning the applicable codes and industry standards that apply to the Project) and design features (meaning the elements to be included in the Project) prior to the preparation of final plans and specifications. The parties shall work cooperatively to agree upon the Project design. County design and field personnel shall work with their City counterparts for coordination purposes. Coordination shall include meetings and information exchanges between corresponding personnel at all levels for the construction. County shall administer the construction contracts for the Project in accordance with the requirements of Title 34, and in accordance with the Project Schedule.
6. **Utility Relocations.** County shall coordinate all utility relocations for the Project.
7. **Rights-of-Way and Construction Easements.** County shall acquire, either by purchase or through its power of eminent domain, all rights-of-way and construction easements necessary for the Project. Each party shall share with the other any records or documents in its possession that will assist the other party in the acquisition of any rights-of-way and construction easements necessary for the Project.
8. **Right of Entry.** City grants County the right to enter upon and use any necessary City-owned property, including but not limited to street and roadway rights-of-way, for the purposes of designing, constructing and maintaining the Project.
9. **Project Permits.** City will grant County all necessary approvals, permissions or permits necessary for the Project at no cost to County.

10. **Project Manager and Representatives.** County will designate a Project Manager for the Project (“Project Manager”) and City will designate a representative (“City Liaison”) to be a liaison with the Project Manager during design and construction of the Project.
11. **Disputes.** In the event the Project Manager and City Liaison disagree on any aspect of the Project, the issue in dispute shall be submitted to the County Administrator and the City Manager for resolution.
12. **Financing of the Project.**
 - a. **Project Funding.** The Project is funded at a level of One Million, Nine Hundred Fifty-Six Thousand Dollars (\$1,956,000) by the RTA under a separate IGA with County (13-00251).
 - b. **Betterments.** In the event City requests County to make improvements above and beyond the scope of the Project as funded by the RTA (“Betterments”), City shall pay all increased costs to County estimated to result from the design or construction of the Betterments prior to the inclusion of the Betterments in the project design or the construction of the Betterments. In the event the actual expenses to County from design or construction of the Betterments exceed the estimated increased costs paid by City to County for design or construction of the Betterments, City shall pay County the additional expenses within thirty (30) days after receiving an invoice from County for the additional amounts owed.
 - c. **Utility Relocations.** County will not reimburse City for expenses that are legally the responsibility of a third party (such as the cost of utility relocations that should be borne by the utility).
13. **Regulation of the Project during Construction.** County shall have responsibility for and control over the Project during construction.
14. **Inspection.** City may inspect any portion of the Project construction for substantial compliance with drawings and specifications. County shall allow official City representatives reasonable access to the Project site during construction. The Project Manager and City Liaison will cooperate and consult with each other during Project construction.
15. **Ownership of Improvements.** Ownership and title to all materials, equipment and appurtenances installed pursuant to this Agreement, including but not limited to any Betterments, shall automatically vest in County.
16. **Operation.** For at least twenty-five years following completion of the Project, County shall: (1) operate and maintain the Project improvements for the purposes set forth in the description of the Project for the benefit of the public; (2) insure the Project improvements (through either direct or self-insurance coverage); (3) maintain, repair and if necessary replace the Project improvements; and (4) make

the Project improvements available to all residents of Pima County without restriction or preference to jurisdiction of residence.

17. Term and Termination.

- a. *Term.* The term of this Agreement begins on the date this Agreement is executed by both parties, and ends on the date that is twenty-five (25) years after completion and acceptance of the Project. 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 may 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.
- 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 any party from liabilities or costs already incurred under this Agreement, nor affect any ownership of the Project constructed pursuant to this Agreement.

- 18. Indemnification.** To the fullest extent permitted by law, each party to this Agreement indemnifies, defends and holds the other party, its governing board or body, officers, departments, employees and agents, harmless from and against any and all suits, actions, legal or administrative proceedings, claims, demands, liens, losses, fines or penalties, damages, liability, interest, attorney's, consultant's and accountant's fees or costs and expenses of whatsoever kind and nature, resulting from or arising out of any act or omission of the indemnifying party, its agents, employees or anyone acting under its direction or control, whether intentional, negligent, grossly negligent, or amounting to a breach of contract, in connection with or incident to the performance of this Agreement.

- a. *Preexisting conditions.* To the fullest extent permitted by law, City indemnifies, defends and holds County, its boards, officers, departments, employees and agents, harmless from and against any claims and damages, as fully set out above, resulting from or arising out of the existence of any substance, material or waste, regulated pursuant to federal, state or local environmental laws, regulations or ordinances, that is present on, in or below or originated from property owned or controlled by City prior to the execution of this Agreement.
 - b. *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 Section. Each party shall keep the other party informed on a current basis of its defense of any claims, demands, suits, or judgments under this Section.
 - c. *Negligence of indemnified party.* The obligations under this Article do not extend to the negligence of the indemnified party, its agents or employees.
 - d. *Survival of termination* This Article survives the termination, cancellation, expiration or revocation, whether in whole or in part, of this Agreement.
19. **Insurance.** When requested, a party shall provide the other party with proof of its worker's compensation, automobile, accident, property damage, and liability coverage or program of self-insurance.
20. **Book and Records.** County shall keep and maintain proper and complete books, records and accounts of the Project.
21. **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 the 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.

22. **Legal Jurisdiction.** Nothing in this Agreement shall be construed as either limiting or extending the legal jurisdiction of County or City.
23. **No Joint Venture.** It is not intended by this Agreement to, and nothing contained in this Intergovernmental 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. No party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for itself or any of its employees.
24. **No Third Party Beneficiaries.** Nothing in this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement, or to affect the legal liability of any party to this Agreement, by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.
25. **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.* County agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09, which supersedes Executive Order 99-4 and amends Executive Order 75-5, and which is hereby incorporated into this IGA as if set forth in full herein. The Order may be viewed and downloaded at the Governor of the State of Arizona's website http://www.azgovernor.gov/dms/upload/EO_2009_09.pdf During the performance of this IGA, County shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.
 - 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.
26. **Waiver.** Waiver by any 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.

27. **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.
28. **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:
29. **Remedies.** Any 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, upon resolution of the Board and 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 City Clerk.

CITY OF TUCSON



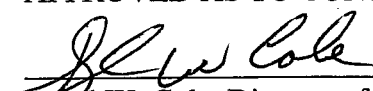
Mayor June 11, 2013

ATTEST:



City Clerk June 11, 2013

APPROVED AS TO CONTENT:



Daryl W. Cole, Director of Transportation

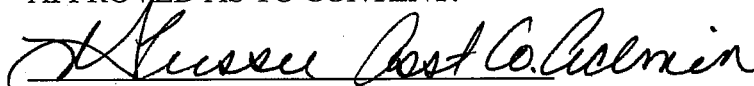
PIMA COUNTY

Chairman, Board of Supervisors

ATTEST:

Robin Brigode
Clerk of the Board

APPROVED AS TO CONTENT:


[Name & Title]


APPROVED AS TO FINANCE PROVISIONS:

 6-27-13
Tom Burke, Finance Director

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, each of whom has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the party represented by the undersigned.

Pima County:

 **TOBIN ROSEN** 5/17/13
Deputy County Attorney Date

City of Tucson:

 5/27/13
Assistant City Attorney Date

Exhibit A: to Exhibit A to Resolution No. 22065

Project Location: East bank of the Pantano River as shown in green below.

