



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

Requested Board Meeting Date: November 10, 2015

or Procurement Director Award

Contractor/Vendor Name (DBA): City of Tucson

Project Title/Description:

Houghton Road Widening at Union Pacific Railroad Improvement Project, RTA Roadway Improvements Element #32

Purpose:

Providing for the County's contribution of funding for the construction of the Project.

Procurement Method:

N/A

Program Goals/Predicted Outcomes:

Full funding is provided to the City to proceed with construction in order to implement the proposed improvements.

Public Benefit:

The project will improve safety, reduce congestion, improve operations, increase mobility for commuters, and upgrade existing infrastructure within the Project area.

Metrics Available to Measure Performance:

N/A

Retroactive:

No

Original Information

Document Type: CT Department Code: TR Contract Number (i.e., 15-123): 16*95

Effective Date: 11/10/2015 Termination Date: 11/10/2020 Prior Contract Number (Synergen/CMS): _____

Expense Amount: \$ 5,500,000 Revenue Amount: \$ _____

Funding Source(s): Development Impact Fees (\$3.4M)
1997 Highway User Revenue Funds (\$2.1M)

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: _____

COB: 10-28-15

9 pgs (L)

Procure Dept 10/28/15 10:09:05

Contact: Rick Ellis, Public Works Division Manager

Department: Transportation

Telephone: (520) 724-6385

Department Director Signature/Date:

[Signature]

10/16/15

Deputy County Administrator Signature/Date:

[Signature]

10/21/15

County Administrator Signature/Date:

[Signature]

10/22/15

(Required for Board Agenda/Addendum Items)

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
Houghton Road Widening at Union Pacific Railroad
Improvement Project, RTA Roadway Improvement Element #32

This Intergovernmental Agreement ("Agreement") is entered into by Pima County, a political subdivision and body politic of the State of Arizona ("the County"); and the City of Tucson, a municipal corporation of the State of Arizona ("the 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.
- B. The City of 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 improvements for the Houghton Road Widening at the Union Pacific Railroad ("the Project").
- D. A portion of the Project lies within the jurisdictional limits of the City and a portion lies within unincorporated Pima County.
- E. The City 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 for the County's contribution of funding for the construction of the Project.
- G. The County intends to contribute \$5,500,000 to the Project under the terms and conditions contained in this Agreement and has entered into this Agreement with the City.

for that purpose.

- H. The County has authority to contribute development impact fees to the Project under A.R.S § 11-1103, and to contribute Highway User Revenue Fund (HURF) bond funds to the Project under A.R.S. § 11-371.

NOW THEREFORE; the City and the 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 6 lane desert parkway roadway improvements to Houghton Road at the Union Pacific Railroad, which is a portion of the project identified as Roadway Improvement Element #32 in the RTA's Regional Transportation Plan.
- 3. County Contribution.**
 - a. Maximum Contribution.* The County shall pay a maximum of \$5,500,000.00 ("Maximum Contribution"), consisting of \$3,400,000.00 in Development impact fees collected under A.R.S. § 11-1102, and an anticipated \$2,100,000.00 in 1997 Highway User Revenue Fund (HURF) Bond funds, to the City in twenty-two equal payments of \$250,000.00 as the County's contribution to the Project construction phase. The County's payments shall commence on the first month following award of a construction contract by the City. The County's payments shall be made monthly upon receipt of invoices from the City.
 - b. Reductions in Maximum Contribution.* As part of the Project, and due to the fact that the County is the owner of the bridge over the railroad, the County has entered into a separate agreement with the Union Pacific Railroad Company (UPRR) which requires that UPRR be compensated for flagging services that will need to be provided during construction. The items of work and estimated cost of approximately \$400,000 is included in the Plans, Specifications and Estimate (PS&E) package and the parties agree that these costs shall be paid by the City's Contractor and then subsequently invoiced to the City for repayment using Project funds. In the event that the reimbursements do not occur as specified and the County becomes responsible for making these payments, then the amount actually paid for these flagging services will reduce, dollar for dollar, the County's Maximum Contribution.

The City hereby acknowledges that the County's commitment of HURF bond funds is subject to legal restrictions and that available HURF bond funds may be limited in any

given fiscal year if actual revenues available to the County do not meet forecasted expectations due to a variety of reasons including actions of the Arizona Legislature to reduce State shared revenues, increases in cost of construction materials or fuels, and other negative economic factors. Subject to these limitations, the County shall use its best efforts to provide the stated bond funds in accordance with the schedule identified above and does not foresee, based on current conditions, any difficulty in meeting the bond disbursement schedule given in this section.

4. Permits. The County shall grant the City 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. City Responsibility; Changes; Disputes. As Lead Agency for the Project, the City 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 City has provided to the County, and the County has reviewed design plans for the Project. The City will advertise and start Project construction activities during FY 2016 and thereafter will diligently pursue the Project to completion. The City will exercise due diligence to consult with the County on items and issues as they arise so that the County 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 City 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 Tucson shall automatically vest in the City, and ownership of all Project improvements in unincorporated Pima County shall automatically vest in the County. Except as the Parties otherwise agree or have agreed to through separate maintenance agreements, each Party shall operate and maintain those Project improvements that it owns.

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 or 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 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 Tucson:

Daryl Cole, Director
Department of Transportation
201 N. Stone Ave., 6th Floor
Tucson, Arizona 85701

Pima County:

Priscilla S. Cornelio, P.E., Director
Pima County Department of Transportation
201 N. Stone, 4th Floor
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.

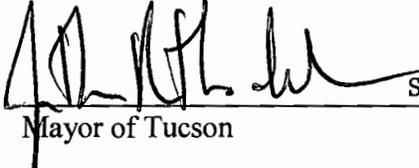
PIMA COUNTY:

Chair, Board of Supervisors Date

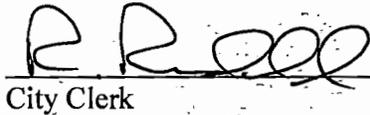
ATTEST:

Clerk of the Board

CITY OF TUCSON:

 _____
September 24, 2015
Mayor of Tucson Date

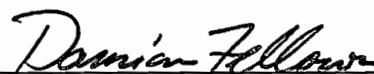
ATTEST:

 _____
September 24, 2015
City Clerk

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

Tucson:  _____
Assistant City Attorney

ADOPTED BY THE
MAYOR AND COUNCIL

September 24, 2015

RESOLUTION NO. 22468

RELATING TO TRANSPORTATION; AUTHORIZING AND APPROVING THE INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN PIMA COUNTY (COUNTY) AND THE CITY OF TUCSON (CITY) FOR CONSTRUCTION OF THE HOUGHTON ROAD/UNION PACIFIC RAILROAD WIDENING PROJECT (PROJECT); AND DECLARING AN EMERGENCY.

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

SECTION 1. The IGA between the County and the City for construction of the Project, attached to this Resolution as Exhibit A, is authorized and approved.

SECTION 2. The Mayor is authorized and directed to execute the aforementioned Exhibit A and any and all documents necessary to effectuate the above contemplated transaction for and on behalf of the City and the City Clerk is authorized and directed to attest to 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, September 24, 2015.



MAYOR

ATTEST:



CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

DF/mg
9/8/15

REVIEWED BY:



CITY MANAGER