



BOARD OF SUPERVISORS AGENDA ITEM REPORT AWARDS / CONTRACTS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: 2/6/24

* = Mandatory, information must be provided

or Procurement Director Award: ☐

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

City of Tucson

***Project Title/Description:**

Intergovernmental Agreement Between Pima County and City of Tucson Valencia Road between Kolb to Houghton

***Purpose:**

County will contribute development impact fees collected from development within the legacy San Xavier Benefit Area and the new Central Benefit Area up to a maximum of \$4,000,000. The City of Tucson has been identified as the lead agency for the Regional Transportation Authority project and will be responsible for all aspects of project implementation.

***Procurement Method:**

This IGA is a non-Procurement contract and not subject to Procurement rules.

***Program Goals/Predicted Outcomes:**

Improvement of Valencia Road between Kolb to Houghton.

***Public Benefit:**

This project will improve the roadway for the public.

***Metrics Available to Measure Performance:**

Standard engineering construction measures.

***Retroactive:**

No

TO: COTB 1-22-2024 (3)
Vers.: 1
pgs.: 9

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THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED

Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (*) fields

Contract / Award Information

Document Type: CT Department Code: TR Contract Number (i.e., 15-123): 24-300
Commencement Date: 2/6/24 Termination Date: 2/5/29 Prior Contract Number (Synergen/CMS): _____
☒ Expense Amount \$ 4,000,000 * ☐ Revenue Amount: \$ _____

*Funding Source(s) required: Impact Fees

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

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

If Yes, is the Contract to a vendor or subrecipient? No

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 22-10.

Amendment / Revised Award Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____
Amendment No.: _____ AMS Version No.: _____
Commencement Date: _____ New Termination Date: _____
Prior Contract No. (Synergen/CMS): _____
☐ Expense ☐ 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): _____
Commencement 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: Kathryn Skinner (Administrative Contact: Michelle Guardado 520-724-2663)

Department: Transportation

Telephone: 520-724-6410

Department Director Signature: _____

Kathryn Skinner

Digitally signed by Kathryn Skinner
DN: cn=Kathryn Skinner, o=Transportation, ou=Pima
County, email=kathryn.skinner@pima.gov, c=US
Date: 2024.01.19 09:17:25 -0700

Deputy County Administrator Signature: _____

County Administrator Signature: _____

Date: _____

Date: 1/19/2024

Date: 1/19/2024

Pima County Department of Transportation

**Project: Intergovernmental Agreement Between Pima County and City of Tucson
Valencia Road between Kolb to Houghton**

Parties: City of Tucson and Pima County

Amount: \$ 4,000,000

Contract No.: CT-TR-24-300

Funding: IMPACT FEES

INTERGOVERNMENTAL AGREEMENT

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 Tucson, a municipal corporation of the State of Arizona ("City"); pursuant to 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. County and City may contract for services and enter into intergovernmental agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-952.
- B. 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.
- C. 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.
- D. City and County wish to cooperate in the construction of roadway improvements for RTA Project # 25, Valencia Rd, Kolb Rd to Houghton Rd, City of Tucson Project # SR14 ("Project").
- E. A portion of the Project lies within the jurisdictional limits of the City (the "City Portion") and a portion lies within unincorporated Pima County (the "Unincorporated Portion").
- F. 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.
- G. City and County want to enter into an intergovernmental agreement to provide for County's

Reimbursement of funding for the construction of the Project.

11. County will contribute funding to the Project based on the length of the Unincorporated Portion, from County development impact fees. The County anticipates that its Reimbursement to the Project will consist of development impact fees collected from development within the legacy San Xavier Benefit Area and the new Central Benefit Area up to a maximum of \$4,000,000.

Agreement

NOW THEREFORE, the Parties, pursuant to the above recitals reflecting the intent of the Parties, and in consideration of the matters and things hereinafter set forth, do mutually agree as follows:

1. **Purpose.** The purpose of this Agreement is to set forth the responsibilities of the Parties for the implementation of design, construction, maintenance, and operation of the Project, including the County's Reimbursement of County development impact fees in the amount of \$4,000,000 ("County Reimbursement").

The amount of the County Reimbursement was established in Appendix M of the RTA's Administrative Code at \$4,000,000. The impact fee commitment, based upon the City Engineer's estimate of the Project's total cost, is less than County's pro rata share of the total cost of the Project based on the length of the unincorporated portion of the Project. The Reimbursement amount is therefore in accordance with all laws, policies, and regulations regulating the use of impact fees in unincorporated areas of County.

2. **Project.** The Project consists of new construction on Valencia Road between Kolb Road to Houghton Road.
3. **Design and Construction Responsibilities.** City shall be responsible for the complete design and construction of the Project in accordance with design standards included in the American Association of State Highway and Transportation Officials and Federal Highway Administration Standards for highway engineering and construction, the PAG Standard Specifications for Public Improvements, and City's municipal design guidelines. City shall advertise, award, execute and administer the design and construction contracts for the Project. City shall have the usual rights of the owner of a public construction contract, including the authority to approve changes and make payments.
4. **Utility Relocations.** City shall coordinate all utility relocations within the Project boundaries. City shall be responsible for all costs of relocation of any Tucson water lines and hydrants installed as part of the Project.
5. **Rights-of-Way and Construction Easements.** City shall acquire any rights of way and construction easements necessary for the Project, either by voluntarily negotiations or by the exercise of eminent domain to the extent permitted by law.
6. **Project Permits.** City shall acquire all permits required in connection with the Project at no cost to the Project.
7. **Public Art.** Public art shall be included in the Project in accordance with the standards set forth in the County's Bond Improvement Plan for the November 4, 1997, Special Bond Election, unless

otherwise agreed by the Parties in writing.

8. **Public Participation.** City shall manage all public participation processes for design and construction of the Project.
9. **City and County Representatives.** City shall furnish a representative to perform the functions of a Project Manager, and County shall furnish a representative available to cooperate and consult with City concerning all matters of the Project.

10. Responsibilities of County:

- a. *Payment of County Reimbursement.* County shall pay a maximum of \$4,000,000 in 24 monthly equal installments of \$166,666.67, commencing on the later of: (i) the first month following approval of this Agreement or (ii) the first month after the start of construction on this Project. The installment payments shall be made monthly upon receipt of invoices from City.
- b. *County Reimbursement limited to Development Impact Fees.* County development impact fees may be limited in any given fiscal year if actual revenues available to County do not meet forecast collection rates. County shall use its best efforts to provide the stated impact fees in accordance with the installments identified above and shall take all steps necessary to protect and maintain the impact fee rates, associated capital improvement plans and schedules necessary for the timely repayment to City.
- c. *Effect of Annexation.* If any part of the Unincorporated Portion is annexed into another jurisdiction while this Agreement is effective, the County Reimbursement will be reduced by a pro rata share that represents the percentage of the entire length of the Unincorporated Portion, except that under no circumstances will City be required to repay any funds already received from County. If the entire Unincorporated Portion is annexed into another jurisdiction while this Agreement is effective, County's payment obligations under this Agreement will terminate upon the effective date of the annexation, and the County will therefore not be obligated to make any further payments to City.
- d. *City Responsible for Excess Costs.* City shall pay all costs of design, right-of-way, and construction of the Project in excess of the County Reimbursement.
- e. *Transaction Privilege Tax.* City agrees that any transaction privilege and use taxes levied by City on the Project shall be contributed to the Project as a portion of City's share of the costs of the Project. City shall provide an accounting to County of the total amount of transaction privilege and use taxes collected by the City for the Project.

11. Reporting and Payment Responsibilities.

- a. *Reimbursement Requests.* Within 25 days of the end of each month, City shall submit to County a Reimbursement request ("Reimbursement Request"), together with supporting documentation, in accordance with the provisions in this Agreement. As Project Manager, City shall be responsible for verifying the accuracy of all invoices submitted by contractors, and shall, as part of its Reimbursement Requests, certify that such invoices have been paid by City (less any retention held by City) prior to requesting Project Reimbursement payment from County.

- b. *Payment of Reimbursement Requests.* County shall review each monthly Reimbursement Request and if County does not approve the request, County shall notify City of its disapproval and the reason for it, within 7 days after receipt of the Reimbursement Request. If County does not disapprove the Reimbursement Request, County shall pay the Reimbursement Request within 21 days after receipt of the Reimbursement Request (except as set forth below with respect to the final accounting and payment).
- c. *Monthly Progress Reports.* Each month, at the same time the City submits its Reimbursement Request, it shall also submit a progress report (the "Progress Report").
- d. *Submittal of Reports.* All Reimbursement Requests and Progress Reports shall be submitted to:

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

- e. *Delays.* City shall promptly notify County at any time City becomes aware of a potential Project delay that may cause a deviation from the reimbursement provisions stated within this Agreement or City's construction responsibilities under this Agreement. In the event of any deviation from the reimbursement or construction expectations of the Parties, County and City shall discuss the issues. Upon notification by City that work on the Project can resume at a mutually agreed upon time and in accordance with the amended reimbursement agreement approved by the Parties, County will resume reimbursing City for Project costs.
- f. *Final Report & Accounting.* Within 90 days after completion and final acceptance of the Project by City, City shall submit to County: (1) a final report describing the Project as constructed and summarizing its history (i.e., who designed, constructed, provided public art, funding sources, description of public participation, purpose and public benefit of the Project, etc.), along with photographs and final as built drawings; (2) a detailed final accounting statement of the funds expended on the Project, along with a final Reimbursement Request if needed. County shall have 15 days after receipt of this final accounting to disapprove the Reimbursement Request. If County does not disapprove the Reimbursement Request, it shall pay the request within 45 days of receipt.

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

13. Ownership, Operation and Maintenance.

- a. *County Inspection.* County may inspect all Project construction relating to its facilities for substantial compliance with drawings and specifications.
- b. *Acceptance of the Project.* Upon completion in substantial compliance with drawings and specifications and acceptance of the Project, County will accept control and

maintain, at its own cost and expense, the Unincorporated Portion. The City shall have no responsibility for the Unincorporated Portion beyond a one-year construction guarantee period.

- c. *Ownership of Installed Materials, Equipment and Appurtenances.* Upon completion of all work under this Agreement, ownership and title to materials, equipment and appurtenances installed within County's right of way will automatically be vested in County and all appurtenances installed within City's right of way will automatically be vested in the City. No further agreement will be necessary to transfer ownership.

14. 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, its acceptance by City, and completion of all payments required under this Agreement.

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

16. 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 the Parties. 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.

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

18. 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, pandemic, 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 obligation by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

19. Laws and Regulations.

- a. *Compliance with Laws.* The Parties shall comply with all federal, state, and local laws, rules, regulations, standards, and Executive Orders, as applicable.
- b. *Licensing.* City shall require its contractors and subcontractors to be adequately insured and appropriately licensed to provide the services hereunder.

- c. *Choice of Law; Venue.* The laws and regulations of the State of Arizona govern the rights and obligations of the Parties hereunder. Any action relating to this Agreement must be filed and maintained in the appropriate court of the State of Arizona in Pima County.

20. Non-Discrimination. The Parties will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this Agreement, including flow-down of all provisions and requirements to any subcontractors. During the term of this Agreement, the Parties will 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.

21. ADA. The Parties will comply with 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.

22. Worker's Compensation. Each Party will comply with the notice of A.R.S. § 23-1022 (E). For purposes of A.R.S. § 23-1022, irrespective of the operations protocol in place, each Party is solely responsible for the payment of Worker's Compensation benefits for its employees.

23. 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.

24. 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 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 a Party from liabilities or costs already incurred under this Agreement.
- b. *Conflict of Interest.* This Agreement may be terminated pursuant to A.R.S. § 38-511 in certain instances involving a 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 termination, the County and the City shall have no further obligation to each other, other than for payment for services rendered prior thereto.
- 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.

- 25. Indemnification.** Each Party (as Indemnitor) agrees to indemnify, defend and hold harmless the other Party (as Indemnatee) from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") for bodily injury of any person (including death) or property damage, but only to the extent that such injury or damage is caused or alleged to be caused by a negligent or intentionally wrongful act or omission of the Indemnitor, or of any of its officers, officials, agents, employees, or volunteers. This indemnity will survive the expiration or termination of this Agreement.
- 26. Insurance.** Each Party warrants that it maintains self-insurance or other insurance covering that Party's liability regarding the Project.
- 27. 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 City at the completion of the Project, except copies maintained by County for its records.
- 28. 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.
- 29. Severability.** In the event that any provision of this 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.
- 30. Notice.** 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:

Sam Credio, Director
Department of Transportation & Mobility
201 N. Stone Ave., 6th Floor
Tucson, Arizona 85701

Pima County:

Kathryn Skinner, 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 Party, designate another address or person for receipt of notices under this Agreement.

- 30. Amendment.** This Agreement may only be modified, amended, altered or changed by written agreement signed by the Parties.

- 31. 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, will be null and void, and no recovery may be had by either Party against the other for lack of performance or otherwise
- 32. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which 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.
- 33. Entire Agreement.** This document, and any exhibits attached to it, constitutes the entire agreement between the Parties pertaining to the subject matter addressed, and all prior or contemporaneous agreements and understandings, oral or written, are superseded and merged into this Agreement. This Agreement may not be modified, amended, altered or extended except through a written amendment signed by the parties.

In WITNESS WHEREOF, the County has caused this Agreement to be executed by the Chairman of its Board of Supervisors and attested to by the Clerk of the Board and the City has caused this agreement to be executed by the Mayor and attested to by the City Clerk.

PIMA COUNTY

CITY OF TUCSON

Chair, Board of Supervisors

Mayor of Tucson

Date

Date

ATTEST

Clerk of the Board

City Clerk

Date

Date

Attorney Certification

The foregoing IGA by and between Pima County and the City of Tucson has been reviewed pursuant to A.R.S. § 11-952(D) 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 IGA.



Deputy County Attorney

Principal Assistant City Attorney

Cindy Nguyen

Print Name

Print Name

1/8/24

Date

Date