



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

Requested Board Meeting Date: July 7, 2015

or Procurement Director Award ☐

**Contractor/Vendor Name (DBA):** City of Tucson and Town of Marana

**Purpose:**

Intergovernmental Agreement (IGA) with City of Tucson and Town of Marana to fund and administer the Silverbell Overlay Project.

**Project Title/Description:**

Silverbell Road Overlay pavement preservation improvements from Ina to Goret

**Procurement Method:**

N/A

**Program Goals/Predicted Outcomes:**

Obtaining full funding from the City and Town to proceed with design, development and construction in order to make much-needed repairs to existing road facilities.

**Public Benefit:**

Road conditions will be greatly improved with enhanced surface upgrades.

**Metrics Available to Measure Performance:**

N/A

**Retroactive:**

N/A

Document Type: CTN Department Code: TR Contract Number (i.e., 15-123): 15\*0163

Effective Date: 7/7/2015 Termination Date: 7/7/2020

☐ Expense Amount: \$ 321,000 ☒ Revenue Amount: \$ 1,095,000 (Tucson & Marana)

Funding Source(s): General Fund

Cost to Pima County General Fund: \$321,000

Contract is fully or partially funded with Federal Funds? ☐ Yes ☒ No ☐ Grant Not Applicable

Were insurance or indemnity clauses modified? ☐ Yes ☒ No ☐ Grant Not Applicable

Vendor is using a Social Security Number? ☐ Yes ☒ No ☐ Grant Not Applicable

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

**Amendment Information**

Amendment No.: \_\_\_\_\_ AMS Version No.: \_\_\_\_\_

Effective Date: \_\_\_\_\_ New Termination Date: \_\_\_\_\_

☐ Expense ☐ Revenue ☐ Increase ☐ Decrease Amount: \$ \_\_\_\_\_

To: COB 6-24-15 (1)  
Ver. 1  
Pgs. - 11

Contact: Rick Ellis, Public Works Division Manager

Department: DOT

Telephone: (520) 724-6385

Department Director Signature/Date: Ann M. Alvarez 6/23/15

Deputy County Administrator Signature/Date: Theresa J. Peralta 6/24/15

County Administrator Signature/Date: C. DeWitt 6/24/15  
(Required for Board Agenda/Addendum Items)

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## **AGREEMENT**

**1. Purpose.** The purpose of this Agreement is to set forth the responsibilities of the Parties for the design and construction of the Project.

**2. Project.** The Project consists of the design and construction of a two-inch asphalt overlay on Silverbell Road from Goret Road to Ina Road, as more fully described in the attached Exhibit A. The County shall be responsible for the design and development activities, including environmental clearances (collectively, "Design"); and for the advertisement, award, execution, and administration of the construction element for the Project (collectively, "Construction"). The County will advertise and start Project activities prior to June 30, 2015 and thereafter diligently pursue the Project to completion. The City and Town will be responsible for reimbursing the County for their respective shares of the cost of Construction according to the terms set forth in this Agreement.

### **3. Costs, Funding and Payment.**

- a. The engineer's estimate of cost of Construction is approximately \$1,416,000. The City shall pay to the County part of the actual cost of Construction that is performed within the City's jurisdiction ("City Contribution"), currently estimated to be approximately \$863,000.00. The City's payment is to occur within one year of the execution of this Agreement. If the City does not pay the City Contribution in full within that period, the City will be liable for interest on the overdue amount at a rate of 8% per annum from the date due until paid. The Town shall pay to the County the actual cost of Construction that is performed within the Town's jurisdiction ("Town Contribution"), currently estimated to be approximately \$232,000. The County will invoice the Town for the Town Contribution at the completion of the Project. The Town must pay the Town Contribution to the County within 60 days after receipt of the invoice. If the Town does not pay the Town Contribution in full within that period, the Town will be liable for interest on the overdue amount at a rate of 8% per annum from the date due until paid. The County will be responsible for Construction that is performed within unincorporated Pima County ("County Contribution"), currently estimated to be approximately \$321,000.
- b. The Parties acknowledge that construction bids could come in higher or lower than the engineer's estimate, and that change orders executed during Construction could increase the cost over the amount of the accepted bid. If the bid that the County wishes to accept would cause the total cost of Construction to exceed the engineer's estimate by more than 15%, the County will inform the City and Town. If any party notifies the other parties, within 10 days thereafter, that any entity cannot cover its share of the increased cost, the Parties will promptly discuss whether to cancel the Project, value-engineer the Project to lower the cost (if feasible), or alter their respective contributions. The Parties will, in that event, proceed as agreed upon at that time and will, if appropriate, amend this Agreement in writing. If neither the City nor the Town notifies the County in a timely manner, as provided in this paragraph, the

County may proceed with award and execution of the contract and each party will be liable for its share of the cost as set forth in subsection (a) above. The County will notify the City and Town if, during construction, change orders cause the Construction cost to increase by more than 10%.

**4. Permits.** Both the City and Town 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. Changes.** As lead agency for the Project, the County will have responsibility for Project oversight and administration of the construction contract. This includes responsibility for verification of quantities, quality of workmanship, contract change orders, and Project modifications as necessary. The County will exercise due diligence to consult with the City and Town on items and issues as they arise so that all Parties have ample opportunity to provide input. In the event that there is a disagreement over any Project elements, the County will retain the final decision making authority.

**6. Ownership of Improvements.** Upon completion of the Project, the County, City, and Town shall remain vested with title to the portions of the improvements falling within their respective geographical jurisdictions as designed pursuant to this Agreement, and shall be responsible for the continued operation and maintenance of same.

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

- a. This Agreement shall be effective on the date of signature by the Chair of the County Board of Supervisors.
- 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 County, City, or Town.

**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, City, and Town. No party shall be liable for any debts, accounts, obligations nor other liabilities whatsoever of any 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 Parties themselves), which, by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Any 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 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.

**14. Termination.**

- a. For cause. A party may terminate this Agreement for material breach of the Agreement by any other party. Prior to any termination under this paragraph, the party allegedly in default shall be given written notice by the other parties 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, any other party may terminate this Agreement. Any such termination shall not relieve any party from liabilities or costs already incurred under this Agreement.
- b. A.R.S. § 38-511 This Agreement may be terminated subject to the provisions of A.R.S. § 38-511.
- 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, the City of Tucson Mayor and Council, or the Town of Marana Mayor and Council fails to appropriate sufficient monies for the

purpose of maintaining this Agreement. In the event of such cancellation, County, City, and Town 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 Intergovernmental 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.

## **15. Indemnification.**

- a. *Mutual Indemnity.* To the fullest extent permitted by law, each party to this Agreement shall indemnify, defend and hold the other parties, their 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 others 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 Article. Each party shall keep the other parties informed on a current basis of its defense of any claims, demands, suits, or judgments under this Article.
- c. *Negligence of indemnified party.* The obligations under this Article shall not extend to the negligence of an indemnified party, its agents or employees.
- d. *Survival of termination.* This Article 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 any 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 Town, the County shall provide, at no cost to the City and Town, As-Built original drawings of the Project.

**18. Inspection and Audit of Records.** The appropriate designated representatives of any party

County shall provide, at no cost to the City and Town, As-Built original drawings of the Project.

**18. Inspection and Audit of Records.** The appropriate designated representatives of any party may perform any inspection of the Project or reasonable audit of any books or records of any 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 any 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:

**Town of Marana:**

Ryan Benavides, Director  
Department of Public Works  
11555 West Civic Center Drive  
Marana, Arizona 85653-7006

**City of Tucson:**

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

**Pima County:**

Priscilla Cornelio, Director  
Pima County Department of Transportation  
201 N. Stone, 4<sup>th</sup> 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; the Town has caused this Agreement to be executed by the Mayor, upon resolution of the Mayor and Council and attested to by the Town Clerk; and the County has caused this Agreement to be executed by the Chairman of its Board of Supervisors, upon resolution of the Board and attested to by the Clerk



of the Board.

THEREFORE, the parties hereto have entered into this Agreement this 9 day  
of June, 2015.


**PIMA COUNTY:**

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

ATTEST:

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

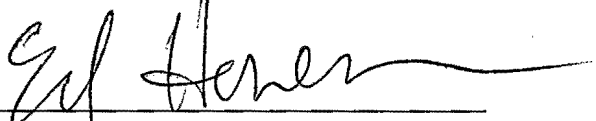
**CITY OF TUCSON:**

  
\_\_\_\_\_  
June 9, 2015  
Mayor of Tucson


ATTEST:

  
\_\_\_\_\_  
June 9, 2015  
City Clerk

**TOWN OF MARANA:**

  
\_\_\_\_\_  
Mayor of Marana

ATTEST:

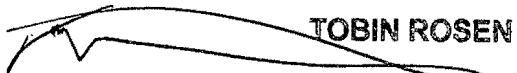
  
\_\_\_\_\_  
Silverbell Overlay 3/5/15

Town Clerk

### Intergovernmental Agreement Determination

The foregoing Intergovernmental Agreement between Pima County, the City of Tucson, and the Town of Marana 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:

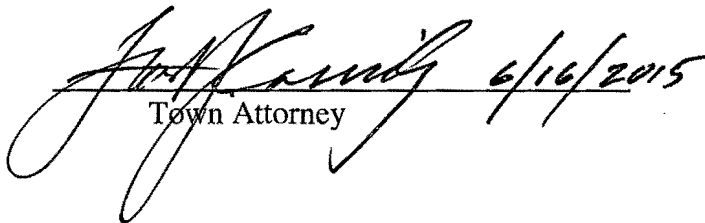
 **TOBIN ROSEN**

Deputy County Attorney *for Andrew Flagg*

City of Tucson:

 **Daria Fellone, 5/22/2015**  
Assistant City Attorney

Marana:

 **Jeff Kandy 6/16/2015**  
Town Attorney

### **Exhibit A**

In general, the project consists of the design and construction of a two-inch asphalt overlay of the existing Silverbell roadway from Goret Road to Ina Road. The specific activities for each section are as follows:

Segment 1; Goret to the vicinity of Tucson City limits (including the small County portion at the vicinity of Sweetwater Drive)

- ✓ Mill and replace two inches of existing roadway. Crack sealing of the milled surface in order to seal larger cracks (greater than 1 ½ inches) will be included.
- ✓ The intersection of Silverbell and Camino del Cerro is excluded from this work.

Segment 2; Vicinity of Tucson City limits to approximately 100 feet north of existing Sunset Road

- ✓ Place fog seal coating over the existing paved surface.

Segment 3; Approximately 100 feet north of existing Sunset Road to approximately 1,000 feet south of Ina Road

- ✓ Place two inches of asphalt over existing roadway.

Paving limits: The paving edge limits shall not extend past the edges of existing asphalt roadway. No shoulder improvements, turnouts or any other activities outside of the existing paved surfaces will be included.

Intersections and cross streets

- ✓ For existing dirt side streets, no paving or improvement activities will be performed as part of this project.
- ✓ For existing paved side streets, the work will consist of a taper mill to match existing pavement.

Striping: All temporary and final striping activities will be included in the project bid packages and documents. The County will be responsible for working with the project contractor to verify transitions, tapers, passing areas, etc.

- ✓ All striping and pavement marking in the County and Town of Marana will in accordance with PCDOT standards.
- ✓ All striping and pavement marking in the City of Tucson jurisdiction will in accordance with City of Tucson DOT standards.

Traffic Control: All traffic control items, elements and configurations will be in accordance with PCDOT standards and guidelines. In addition, any Contractor requests for night work, or road closures that improve productivity and/or efficiency, will be reviewed and evaluated by all parties.

The approximate lengths for each agency are as follows:

- City: 3.16 miles
- Town: 1.15 miles
- County: 2.04 miles

Public Notification: The City and Town shall each designate a person(s) responsible for disseminating all related project information within their respective organizations. The County will ensure that all project information and activities is shared with this individual(s) with adequate advance notice.

**MARANA RESOLUTION NO. 2015-066**

RELATING TO PUBLIC WORKS; APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT BETWEEN AND AMONG PIMA COUNTY, THE CITY OF TUCSON, AND THE TOWN OF MARANA FOR THE DESIGN AND CONSTRUCTION OF THE SILVERBELL ROADWAY OVERLAY PROJECT; AND SUPERSEDING MARANA RESOLUTION NO. 2015-053

WHEREAS Pima County, the City of Tucson, and the Town of Marana wish to cooperate in the design and construction of roadway improvements for the Silverbell Overlay Project, which traverses all three jurisdictions; and

WHEREAS the Town Council approved a slightly different version of this intergovernmental agreement by the May 19, 2015 adoption of Marana Resolution No. 2015-053, but approval of this revised version is necessary to conform to the version adopted by the other entities; and

WHEREAS the Mayor and Council of the Town of Marana feel it is in the best interests of the citizens of Marana to enter into the intergovernmental agreement addressed by this resolution to coordinate and cooperatively fund and build these road improvements.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF MARANA, that the intergovernmental agreement between and among Pima County, the City of Tucson, and the Town of Marana for the design and construction of the Silverbell Roadway Overlay Project attached to this resolution as Exhibit A is hereby approved, and the Mayor is authorized to execute it for and on behalf of the Town of Marana.

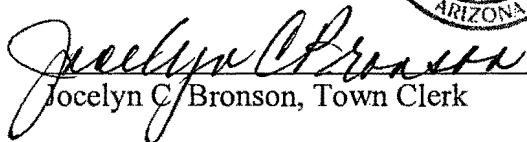
IT IS FURTHER RESOLVED that Marana Resolution No. 2015-053, adopted on May 19, 2015, is superseded and replaced by this resolution.

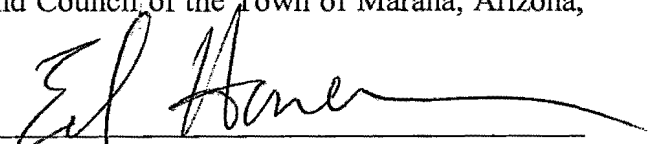
IT IS FURTHER RESOLVED that the Town Manager and staff are hereby directed and authorized to undertake all other and further tasks required or beneficial to carry out the terms, obligations, conditions and objectives of the intergovernmental agreement.

PASSED AND ADOPTED by the Mayor and Council of the Town of Marana, Arizona, this 16th day of June, 2015.

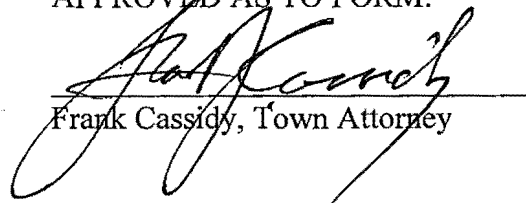


ATTEST:

  
Jocelyn C. Bronson, Town Clerk

  
Mayor Ed Honea

APPROVED AS TO FORM:

  
Frank Cassidy, Town Attorney