



BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: October 1, 2019

* = Mandatory, information must be provided

or Procurement Director Award ☐

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

Arizona Department of Transportation (ADOT)

***Project Title/Description:**

Intergovernmental Agreement State Route 77 (Oracle Road); River Road to Calle Concordia Pavement Rehabilitation, Lighting, Sidewalk and Intersection Improvements

***Purpose:**

ADOT will design and administer construction for pavement rehabilitation, roadway lighting, sidewalks, retaining walls and intersection improvements along Oracle Road between Genematas Drive and Suffolk Drive.

***Procurement Method:**

Non-Procurement Contract as identified in BOS D29.4

***Program Goals/Predicted Outcomes:**

ADOT will make the improvements to Oracle Road. After acceptance of the project, Pima County will assume maintenance along Oracle Road between Genematas Drive and Suffolk Drive for the sidewalk, including keeping the pathways free of debris and vegetation, removal of graffiti and pay the electrical power costs for the roadway lighting. All provisions in the agreement for maintenance shall be perpetual unless assumed by another entity.

***Public Benefit:**

The project will improve safety by providing sidewalks and lighting for pedestrians.

***Metrics Available to Measure Performance:**

Standard engineering design performance measures (scope, budget and schedule, quality/stakeholder reviews, etc.)
Standard construction performance measures (schedule and budget, quality control testing, material submittals, etc.)

***Retroactive:**

No

To: COTB- 9-5-19

Ver. - 1

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Contract / Award InformationDocument Type: CTN Department Code: TR Contract Number (i.e., 15-123): 20-020Effective Date: 10/1/2019 Termination Date: 9/30/2024 Prior Contract Number (Synergen/CMS): _____☐ Expense Amount: \$ _____ ☒ Revenue Amount: \$ 0***Funding Source(s) required:** N/AFunding 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?** NoWere 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 22-73.***Amendment / Revised Award Information**

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____

Amendment No.: _____ AMS Version No.: _____

Effective Date: _____ New Termination Date: _____

Prior Contract No. (Synergen/CMS): _____

☐ Expense or ☐ 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): _____

Effective 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: Stephen Wilson (Please return contract to Michelle Guardado, 724-2663)Department: Transportation Telephone: 724-5912Department Director Signature/Date: Anthony Oliveras 8/30/19Deputy County Administrator Signature/Date: C. Butcher 9/13/19County Administrator Signature/Date: _____ 9/14/19
(Required for Board Agenda/Addendum Items)

CONTRACT
NO. <u>CTN-TR-20-020</u>
AMENDMENT NO. _____
<small>This number must appear on all invoices, correspondence and documents pertaining to this contract.</small>

ADOT CAR No.: IGA 18-0007009-I
 AG Contract No.: P0012018002362
 Project Location/Name: SR77; River Rd – Calle Concordia
 Type of Work: Pavement Rehabilitation, Lighting, Sidewalk, and Intersection Improvements
 Federal-aid No.: NHPP & HSIP 077-A(215) T
 ADOT Project No.: H891901D/01C
 TIP/STIP No.: 5689/7875
 CFDA No.: 20.205 - Highway Planning and Construction
 Budget Source Item No.: 5689, 7875

INTERGOVERNMENTAL AGREEMENT

BETWEEN
 THE STATE OF ARIZONA
 AND
 PIMA COUNTY

THIS AGREEMENT is entered into this date _____, pursuant to the Arizona Revised Statutes("A.R.S.") §§ 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State" or "ADOT") and the PIMA COUNTY, (the "County"). The State and the County are collectively referred to as "Parties".

I. RECITALS

1. The State is empowered by A.R.S § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The County is empowered by A.R.S. § 11-251 to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the County.
3. The State will design, advertise, award and administer construction of pavement rehabilitation, roadway lighting, sidewalk, re-building retaining walls, and intersection improvements along State Route 77 (SR77), between Genematas Drive (MP 72.30) and Suffolk Drive (MP 75.41), (the 'Project'). The State will obtain federal funds for the design and construction costs associated with the Project. The County will be responsible for the costs associated with the electrical power, maintenance of the sidewalks, and any handrails deemed necessary during design.

THEREFORE, in consideration of the mutual terms expressed in this Agreement, it is agreed as follows:

II. SCOPE OF WORK

1. The Parties agree:
 - a. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project plans and specifications.
2. The State will:
 - a. Execute this Agreement, and if the Project is approved by FHWA and funds for the Project are available, be the County's designated agent for the Project.
 - b. Prepare and provide the design plans, specifications, and other such documents and services required. For the construction bidding and construction of the Project and incorporate comments from the County as appropriate.
 - c. With FHWA authorization, proceed to administer construction: advertise, receive and open bids, award, and enter into a contract with the firm for the construction of the Project. Administer contract(s) for the Project and make all payments to the contractor(s).
 - d. Notify the County of final inspection and acceptance of all the Project improvements.
3. The County will:
 - a. Designate the State as the County's authorized agent for the Project.
 - b. Review the design documents required for construction of the Project and provide comments to the State within two weeks of receipt of documents.
 - c. Not permit or allow any encroachments upon or private use of the public right-of-way, except those authorized by permit. In the event of any unauthorized encroachments or improper use, the County shall take all necessary steps to remove or prevent any such encroachment or use on, to, and over said County rights-of-way. This temporary right will expire with completion of the Project.
 - d. Automatically grant to the State, by execution of this Agreement, its agents and/or contractors, without cost, the temporary right to enter County rights-of-way, as required, to conduct any and all construction and preconstruction related activities for the Project, on, to and over said County rights-of-way. This temporary right will expire with completion of the Project.
 - e. After final inspection and acceptance of the Project is complete, assume responsibility for maintenance along SR 77, between Genematas Drive (MP 72.30) and Suffolk Drive (MP 75.41), of the sidewalk, including but not limited to keeping pathway surface areas free of all debris and undesirable weeds, removal of graffiti, and all electrical power costs for roadway lighting between MP 72.30 and MP 75.41, at its sole expense.

III. MISCELLANEOUS PROVISIONS

1. This Agreement shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.
2. Any change or modification to the Project will only occur with the mutual written consent of both Parties.
3. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of the Project and all related deposits and/or reimbursements are made. Any provisions for maintenance shall be perpetual, unless assumed by another competent entity.
4. This Agreement may be cancelled at any time prior to the award of the Project contract and after 30 days written notice to the other Party. It is further understood and agreed that in the event the County terminates this Agreement, the State shall in no way be obligated to complete or maintain the Project.
5. To the Extent permitted by law, the County shall indemnify, defend, and hold harmless the State, any of its departments, agencies, officers or employees (collectively referred to in this paragraph as the "State") from any and all claims, demands, suits, actions, proceedings, loss, cost and damages of every kind and description, including reasonable attorneys' fees and/or litigation expenses (collectively referred to in this paragraph as the "Claims"), which may be brought or made against or incurred by the State on account of loss of or damage to any property or for injuries to or death of any person, to the extent caused by, arising out of, or contributed to, by reasons of any alleged act, omission, professional error, fault, mistake, or negligence of the County, its employees, officers, directors, agents, representatives, or contractors, their employees, agents, or representatives in connection with or incident to the performance of this Agreement. The County's obligations under this paragraph shall not extend to any Claims to the extent caused by the negligence of the State, except the obligation does apply to any negligence of the County which may be legally imputed to the State by virtue of the State's ownership or possession of land. The County's obligations under this paragraph shall survive the termination of this Agreement.
6. The State shall include Section 107.13 of the 2008 version of the Arizona Department of Transportation Standard Specifications for Road and Bridge Construction, incorporated into this Agreement by reference, in the State's contract with any and all contractors, of which the County shall be specifically named as a third-party beneficiary. This provision may not be amended without the approval of the County.
7. Should the federal funding related to this Project be terminated or reduced by the federal government, or Congress rescinds, fails to renew, or otherwise reduces apportionments or obligation authority, the State shall in no way be obligated for funding or liable for any past, current or future expenses under this Agreement.
8. The cost of the Project under this Agreement includes indirect costs approved by the FHWA, as applicable.

9. The Parties warrant compliance with the Federal Funding Accountability and Transparency Act of 2006 and associated 2008 Amendments (the "Act"). Additionally, in a timely manner, the County shall provide information that is requested by the State to enable the State to comply with the requirements of the Act, as may be applicable.
10. The County acknowledges and will comply with Title VI of the Civil Rights Act Of 1964.
11. This Agreement shall be governed by and construed in accordance with Arizona laws.
12. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.
13. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes §§ 35-214 and 35-215 shall apply to this Agreement.
14. 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. The parties to this Agreement shall comply with Executive Order Number 09-09 issued by the Governor of the State of Arizona and incorporated by reference regarding "Non-Discrimination".
15. Non-Availability of Funds: Every obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the fulfillment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.
16. In the event of any controversy, which may arise out of this Agreement, the Parties agree to abide by arbitration as is set forth for public works contracts if required by Arizona Revised Statutes § 12-1518.
17. The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 41-4401.
18. The Parties shall certify that all contractors comply with the applicable requirements of A.R.S. §35-393.01.¹
19. The Parties shall ensure that all contractors comply with the applicable requirements of Arizona Revised Statutes §35-393.01
20. The Parties shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.

¹ In *Jordahl v. Brnovich et al.*, Case No. 3:17-cv-08263 (D. Ariz.), the U.S. District Court entered a preliminary injunction that enjoins the State from enforcing A.R.S. § 35-393.01(A) (the "Anti-Israel Boycott Provision"). That statute states that: "[a] public entity may not enter into a contract with a company to acquire or dispose of services, supplies, information technology or construction unless the contract includes a written certification that the company is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of Israel." Unless and until the District Court's injunction in *Jordahl* is stayed or lifted, the Anti-Israel Boycott Provision (A.R.S. § 35-393.01(A)) is unenforceable and the State will take no action to enforce it.

21. All notices or demands upon any Party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

For Agreement Administration:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 637E
Phoenix, Arizona 85007
(602) 712-7124
(602) 712-3132 Fax

Pima County
Attn: Steve Wilson
201 N. Stone, 4th Floor
Tucson, Arizona 85701
(520) 724-5912
Stephen.Wilson@pima.gov

For Project Administration:

Arizona Department of Transportation
Project Management Group
205 S. 17th Avenue, MD 614E
Phoenix, Arizona 85007
(602) 712-7046

Pima County
Attn: Steve Wilson
201 N. Stone, 4th Floor
Tucson, Arizona 85701
(520) 724-5912
Stephen.Wilson@pima.gov

For Financial Administration:

Arizona Department of Transportation
Financial Management Services, Resources
Administration
206 S. 17th Avenue, MD 200B
Phoenix, Arizona 85007

Pima County
Attn: Steve Wilson
201 N. Stone, 4th Floor
Tucson, Arizona 85701
(520) 724-5912
Stephen.Wilson@pima.gov

22. In accordance with Arizona Revised Statutes § 11-952 (D) attached and incorporated in this Agreement is the written determination of each Party's legal counsel and that the Parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

PIMA COUNTY

STATE OF ARIZONA

Department of Transportation

By _____
Chairman, Board of Supervisors

By _____
STEVE BOSCHEN, P.E.
Division Director

ATTEST:

By _____
Clerk of the Board

ATTORNEY APPROVAL FORM FOR THE PIMA COUNTY

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the PIMA COUNTY, an agreement among public agencies which, has been reviewed pursuant to Arizona Revised Statutes §§ 11-951 through 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the County under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 30th day of July, 2019.



County Attorney

KELL OLSON