



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

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: November 5, 2019

\* = 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 the City of Tucson for Archaeological Treatment and Recovery Services Related to the Silverbell Road, Ina Road to Grant Road Improvement Project

**\*Purpose:**

The City and County have established this agreement for the purpose of securing the County's lead efforts to provide archaeological site treatment and data recovery services, for the El Camino del Cerro to Goret Road segment of the Silverbell Road Widening Project, a City of Tucson Department of Transportation project. The City has agreed to reimburse the County for these services (including County labor costs) via regional funds as identified in the Pima Association of Governments' Regional Transportation Plan, totaling an amount not to exceed \$5,000,000.

**\*Procurement Method:**

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

**\*Program Goals/Predicted Outcomes:**

The County will procure and manage an Arizona State Museum-permitted archaeological contractor to perform archaeological treatment and data recovery to satisfy compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306108, and ARS 41-841, et seq. for the El Camino del Cerro to Goret Road portion of the Silverbell Road Widening Project.

**\*Public Benefit:**

Cultural resources compliance will allow construction of new roadway, which will provide additional capacity for existing and future travel needs along Silverbell Road.

**\*Metrics Available to Measure Performance:**

The metrics available are the quality of work, work completed within budget, and within a timely manner.

**\*Retroactive:**

No

To: CoB - 10-8-19  
Ver. - 1  
Pgs - 9  
(3)

**Contract / Award Information**

Document Type: CTN Department Code: SUS Contract Number (i.e., 15-123): 20\*060  
Effective Date: 11/5/2019 Termination Date: 11/4/2024 Prior Contract Number (Synergen/CMS): \_\_\_\_\_  
☐ Expense Amount: \$\* \_\_\_\_\_ ☒ Revenue Amount: \$ 5,000,000.00

**\*Funding Source(s) required:**

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?**

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 22-73.*

**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: Linda Mayo

Department: Office of Sustainability and Conservation

Telephone: 724-6451

Department Director Signature/Date: \_\_\_\_\_

Deputy County Administrator Signature/Date: \_\_\_\_\_

County Administrator Signature/Date: \_\_\_\_\_

*(Required for Board Agenda/Addendum Items)*



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# Board of Supervisors Memorandum

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November 5, 2019

**Intergovernmental Agreement between Pima County and the City of Tucson for  
Archaeological Treatment and Recovery Services Related to the Silverbell Road, Ina Road  
to Grant Road Improvement Project**

As part of the Pima Association of Governments Regional Transportation Plan, the City of Tucson has completed the widening of the Silverbell Road corridor, from Grant Road to Goret Road and has transitioned to the second segment of the widening project from Goret Road to El Camino del Cerro. This corridor crosses multiple jurisdictions and as authorized in the Intergovernmental Agreement (IGA), Pima County and the City of Tucson have agreed to share technical and other resources related to transportation and other public works projects.

Background:

During the past two years the Office of Sustainability and Conservation (OSC) was invited by the City to participate in discussions associated with the Goret to El Camino del Cerro segment of the project and has periodically provided guidance to the City regarding cultural resources compliance. This complex project requires compliance with a variety of federal statutes including the Section 404 Clean Water Act permit that is administered by the US Army Corps of Engineers (CORPS), the National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306108 with the CORPS as the designated lead federal agency and state statutes, particularly ARS 41-841, et seq. that is administered by the Arizona State Museum.

The Silverbell corridor lies within an area that has deep historical significance. Cultural resources records indicate that 13 archaeological sites will be impacted by project construction and therefore, require varying degrees of archaeological mitigation as mandated by federal and state laws. Due to the complexity of the mitigation work required for this project, the City has determined that Pima County Office of Sustainability and Conservation is best suited to provide archaeological treatment and data recovery services. Although the schedule and duration of this project has not yet been determined by the City, it is estimated to take five years to complete. City and County staff have established the attached Intergovernmental Agreement wherein the City has agreed to reimburse the County for all cultural resources services for the Silverbell Road - Goret to El Camino del Cerro project totaling an amount not to exceed \$5 million. There is no cost to the County and eligible expenses include, but are not limited to, the County's to-be-selected consultant/contractor costs for archaeological services and County staff labor costs.

The Honorable Chairman and Members, Pima County Board of Supervisors  
Re: **Intergovernmental Agreement between Pima County and the City of Tucson for  
Archaeological Treatment and Recovery Services Related to the Silverbell Road, Ina  
Road to Grant Road Improvement Project**

November 5, 2019

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Recommendation

I recommend that the Board of Supervisors approve this IGA for the County to provide archaeological services for the Silverbell Road corridor from Grant Road to Goret Road and for the County to be reimbursed for these services not to exceed \$5 million over an estimated five year period.

Sincerely,



C.H. Huckelberry  
County Administrator

CHH/lab – September 26, 2019

c: Carmine DeBonis, Jr., Deputy County Administrator for Public Works  
Linda Mayro, Director, Office of Sustainability and Conservation

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 Archeological Treatment and Recovery Services Related to the  
Silverbell Road, Ina Road to Grant Road Improvement Project**

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 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 are cooperating in the construction of roadway improvements for the Silverbell Road, Ina Road to Grant Road Improvement Project ("the Project.")
- D. A portion of the Project lies within the jurisdictional limits of the City.
- 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 securing the County's lead efforts to provide archaeological site treatment and data recovery services, for the El Camino del Cerro to Goret Road segment of the Project.
- G. The City intends to contribute no more than \$5,000,000 to the County under the terms and conditions contained in this Agreement, and has entered into this Agreement with the County for the purpose of archaeological treatment and recovery services.

NOW THEREFORE; the City and County, pursuant to the above recitals and in consideration of the matters hereinafter 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 archaeological treatment and recovery services related to the Project.
2. **Scope.** This Agreement concerns archeological treatment and recovery services related to the El Camino del Cerro to Goret Road portion of the Project. The County will procure and manage an Arizona State Museum-permitted archaeological contractor to perform archaeological treatment and data recovery to satisfy compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306108, and ARS 41-841, et seq. for the El Camino del Cerro to Goret Road portion of the Project.
3. **City Contribution.** The City shall reimburse the County for archeological treatment and recovery services rendered related to the El Camino del Cerro to Goret Road portion of the Project, via regional funds as identified in the Pima Association of Governments' Regional Transportation Plan, totaling an amount not to exceed \$5,000,000. Eligible expenses include, but are not limited to, contractor costs for archaeological services and County labor costs. County labor costs will include the hourly rate for each County employee that reflects the employee's salary plus employment-related expenses and overhead. The actual invoiced rate for each County employee will be the rate applicable at the time the Project services are rendered and thereby covering adjustments to County employee compensation, employee-related expenses, and overhead calculation for the duration of the Project. The County will prepare and submit invoices for archaeological contractor and County labor services on a monthly basis to the City. The City shall make payments to the County within 15 days of the receipt of monthly invoices.
4. **Permits.** The City shall grant the County and its Contractors right-of-way use permits allowing full accessibility to perform work as described. These permits shall be granted at no cost to the County or its Contractors.
5. **City Responsibility; Changes.** As Lead Agency for the Project, the City will have responsibility for Project oversight, including administration of the road design and construction contracts. This includes responsibility for verification of quantities, quality of workmanship, contract change orders, and Project modifications as necessary.
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 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 City or County.

## **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 nor 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, and 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 (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. 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 City and the County 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 judgement 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 claim, demands, suits, or judgements 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 correspondences shall be the property of the City at the completion 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:**

Diana Alarcon, Director  
Tucson Department of Transportation  
201 N. Stone Avenue, 6<sup>th</sup> Floor  
Tucson, Arizona 85701

**Pima County:**

Linda Mayro, Director  
Pima County Office of Sustainability and Conservation  
201 N. Stone Avenue, 6<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 Party, 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 its 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:**

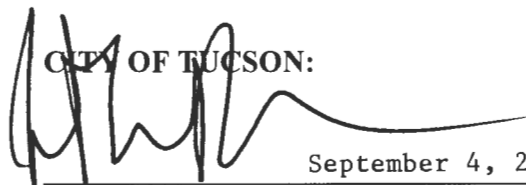
\_\_\_\_\_  
Chairman, Board of Supervisors      Date

ATTEST:


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

APPROVED AS TO CONTENT

 8/30/19  
\_\_\_\_\_  
Department Head      Date

  
\_\_\_\_\_  
CITY OF TUCSON:      September 4, 2019  
Mayor of Tucson      Date  
Jonathan Rothschild

ATTEST:

  
\_\_\_\_\_  
City Clerk  
Roger W. Randolph

### 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

City of Tucson:

  
Principal Assistant City Attorney

ADOPTED BY THE  
MAYOR AND COUNCIL

September 4, 2019

RESOLUTION NO. 23068

RELATING TO INTERGOVERNMENTAL AGREEMENTS (IGA); APPROVING AND AUTHORIZING THE EXECUTION OF AN IGA BETWEEN THE CITY OF TUCSON (CITY) AND PIMA COUNTY FOR THE ARCHEOLOGICAL TREATMENT AND DATA RECOVERY FOR THE EL CAMINO DEL CERRO TO GORET ROAD PORTION OF THE SILVERBELL ROAD, INA ROAD TO GRANT ROAD IMPROVEMENT PROJECT; AND DECLARING AN EMERGENCY.

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

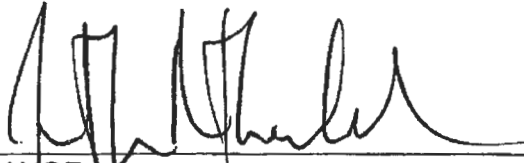
SECTION 1. The IGA between the City and Pima County for an Arizona State Museum-permitted archaeological contractor to perform Archeological Treatment and Data Recovery, in compliance with the National Historic Preservation Act of 1966, as amended, for the El Camino del Cerro to Goret Road portion of the Project, attached as Exhibit A, is approved.

SECTION 2. The Mayor is hereby authorized and directed to execute the said IGA for and on behalf of the City 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 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 4, 2019.

  
MAYOR

ATTEST:


  
CITY CLERK

APPROVED BY:

  
CITY ATTORNEY

DLD/1  
7/16/19

REVIEWED BY:

  
CITY MANAGER