



CITY OF SOUTH TUCSON RESOLUTION NO: 12-03

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SOUTH TUCSON, ARIZONA, APPROVING THE INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN THE CITY OF SOUTH TUCSON ("CITY") AND THE REGIONAL TRANSPORTATION AUTHORITY (RTA) OF PIMA COUNTY FOR THE DESIGN AND CONSTRUCTION OF 4TH AVENUE STREET LIGHTING REPAIRS AND AUTHORIZING THIS RESOLUTION FOR THE PURPOSE OF AUTHORIZING THE MAYOR AND/OR THE CITY MANAGER TO EXECUTE THE AGREEMENT AND DECLARING AN EMERGENCY TO EXIST.

WHEREAS, the RTA is authorized pursuant to A.R.S. §48-5301, et seq. to act as a regional taxing authority for the purpose of funding multi-model transportation operations and improvements identified in the "Plan" approved by the voters at the Special Election held in Pima County, Arizona on May 16, 2006; and

WHEREAS, the RTA is authorized pursuant to A.R.S. §48-5304 (16) and §48-5308 to administer and distribute the regional transportation funds to the members of the Authority and to sell bonds in furtherance of that purpose to fund those projects or programs identified in the "Plan"; and

WHEREAS, the RTA and the CITY may contract and enter into agreements with one another for joint and cooperative action pursuant to A.R.S. § 11-951 et seq. and A.R.S. § 48-5304; and

WHEREAS, the CITY and the RTA desire to enter into an IGA for the purpose of setting forth the responsibilities of the parties with regard to the design and construction of 4th Avenue street lighting and repairs; and

WHEREAS, the Parties desire to have this item presented to the City of South Tucson Mayor and City Council at its next regular meeting on Monday, January 30, 2012; and

WHEREAS, the City of South Tucson concurs and approves of the Parties' desires to enter into the IGA for the above stated purpose; and

WHEREAS, the Mayor and Council of the City of South Tucson have determined that it is in the best interest of the City and its citizens to approve the "IGA" with the RTA; and

WHEREAS, it is necessary for the preservation of the peace, health, and safety of the City of South Tucson, Arizona, that an emergency be declared to exist, and that this Resolution be effective immediately upon its passage and adoption.

THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of South Tucson, Arizona, that the City hereby formally ratifies and approves the execution of the "IGA" and empowers the Mayor of the City of South Tucson to execute said document.

BE IT FURTHER RESOLVED by the Mayor and Council of the City of South Tucson, Arizona, that, due to an existing emergency declared herein, the immediate effectiveness of this Resolution is necessary to preserve the peace, health, and safety of the City of South Tucson, Arizona, and this Resolution shall therefore be effective upon its passage and adoption.

PASSED AND ADOPTED by the Mayor and Council of the City of South Tucson, Arizona, this 30th day of January, 2012.

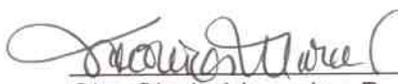
APPROVED/EXECUTED



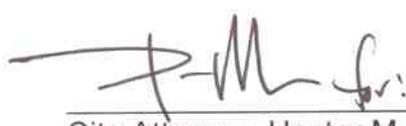
MAYOR, JENNIFER ECKSTROM

ATTEST:

APPROVED AS TO FORM:



City Clerk, Veronica B. Moreno



City Attorney, Hector M. Figueroa, Esq.

Intergovernmental Agreement
between
The Regional Transportation Authority of Pima County
and
South Tucson
for the
Design and Construction of 4th Avenue Street Lighting Repairs

This Agreement (hereinafter “the Agreement”) is entered into by and between the Regional Transportation Authority of Pima County (“ the RTA”), a special taxing district formed pursuant to Title 48 Chapter 30 of the Arizona Revised Statutes (A.R.S.), and City of South Tucson, a body politic and corporate of the State of Arizona (“the City”), pursuant to A.R.S. §§ 11-952 and 11-1103.

RECITALS

- A. A.R.S. § 48-5301, et seq., authorizes the RTA to act as a regional taxing authority for the purpose of funding multi-modal transportation operations and improvements identified in the Regional Transportation Plan (“the Plan”), approved by the voters at the special election held in Pima County, Arizona, on May 16, 2006.
 - B. The governing board of the RTA is composed of representatives of each member of the regional council of governments in accordance with A.R.S. § 48-5303.
 - C. Pursuant to A.R.S. § 48-5304 (12), the governing board of the RTA has the authority to implement the elements of the Plan.
 - D. Pursuant to A.R.S. § 48-5304 (13), the governing board of the RTA shall coordinate the implementation of the Plan among the local jurisdictions.
 - E. A Regional Transportation Fund was established by the Arizona Legislature per A.R.S. § 48-5307 to be the repository for those funds collected for the purpose of funding the transportation projects identified in the Plan.
 - F. The Authority is authorized by A.R.S. §§ 48-5304 (16) and 48-5308 to administer and distribute the regional transportation funds to the members of the Authority and to sell bonds in furtherance of that purpose to fund those projects or programs identified in the Plan.
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- A. The Lead Agency is authorized by City of South Tucson General Ordinances Chapter 14, Section 27(a) (b) to design, maintain, control and manage traffic-control signs, signals and devices within the Lead Agency’s jurisdictional boundaries.
 - B. The Lead Agency may have a legal contract with one or more jurisdictions within Pima County empowering the Lead Agency to perform roadway and other improvements outside the Lead Agency’s jurisdictional boundaries.

- C. The Project is one of the transportation projects included in the Plan or is eligible for funding as part of a categorical program included in the Plan.
- D. The Authority intends to fund the Project under the terms and conditions contained in this Agreement and have entered into this Agreement for that purpose.
- E. It is the policy of the Authority to require that a lead agency be identified and an Intergovernmental Agreement (IGA) be approved and entered into by the Authority and the lead agency before requests for funding reimbursement or payment can be processed by the Authority.
- F. The City of South Tucson has been identified as the 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, right of way acquisition and construction, advertisement, award, execution and administration of the design and construction contracts for the Project.
- G. The RTA's Administrative Code will control all payments and other procedures unless otherwise specified herein.
- H. The Authority and the Lead Agency may contract for services and enter into agreements with one another for joint and cooperative action pursuant to A.R.S. § 11-951, et seq.
- I. The Lead Agency and the Authority wish to cooperate in the design and construction of 4th Avenue Street Lighting Repairs.
- J. The RTA costs associated with the provision of these services within the City of South Tucson will partially satisfy the minimum jurisdictional allocation to the City, pursuant to A.R.S. § 48-5308 (D) under the terms and conditions contained in this Agreement, and both the City and the RTA have entered into this Agreement for that purpose.

NOW, THEREFORE, City and the RTA, pursuant to the above and in consideration of the matters and things set forth herein, do mutually agree as follows:

AGREEMENT

- 1. Purpose.** The purpose of this Agreement is to set forth the responsibilities of the parties for the design, construction, maintenance and operation of the Project and to address the legal and administrative matters among the parties, including minimum jurisdictional funding.
- 2. Project.** The Project consists of the repair and selective reconstruction of the street lighting system for South 4th Avenue, to include the replacement of copper electrical wiring which was stolen by vandals.

This project is more fully depicted in the attached Exhibit A, including the following:

- a) Detailed project scope and schedule.
- b) Project budget and cost breakdown of items eligible for reimbursement by the Authority including any proposed billing of staff time directly attributable to Project.
- c) Total amount of RTA funding allowed for the Project plus a breakdown of any other regional, local, federal or state funding available.
- d) Designation of Project phases, if applicable, and any additional related agreements.
- e) Estimated construction start date and duration of construction.
- f) Projected cost reimbursement timeline.
- g) Identification of the Lead Agency's duly authorized representative for signing and submitting payment requests.

3. Effective Date; Term. This Agreement shall become effective on the date it is fully executed by both parties and shall continue in effect until all improvements constructed pursuant to this Agreement are completed, all eligible reimbursement payments to the Lead Agency are concluded, and all warranties applicable to the Project have expired.

4. Minimum Jurisdictional Funding; Calculation and Process. The RTA has an obligation provide the greater amount of one percent of the revenues collected from the RTA transportation excise tax or three hundred thousand dollars to the City for purposes consistent with the RTA Plan. The RTA shall provide to the City an annual report of funds spent, pledged or accumulated for projects or services within the City.

5. Responsibilities of South Tucson as Lead Agency.

- a. The Lead Agency shall be responsible for the design, construction and/or installation of the Project in accordance with this Agreement and all applicable public roadway, traffic signal, and street lighting design and construction standards. Design Standards are federal, state, county or municipal standards for engineering, traffic, safety or public works facilities design. Examples of Design Standards include the American Association of State Highway and Transportation Officials and Federal Highway Administration standards for highway engineering and construction, the Pima County/City of Tucson Standard Specifications for Public Improvements, the Pima County Roadway Design Manual, October 2002 revision, the Pima County Department of Transportation /City of Tucson Department of Transportation Pavement Marking Design Manual, and Pima County and municipal design guidelines for roadway lane widths and level of drainage protection.
- b. If consultants or contractors are employed to perform any portion of the Project, the Lead Agency shall be responsible for the contracts for design and construction of the Project and shall select the consultants and contractors to be used on the Project. The Lead Agency shall immediately

provide to the Authority copies of any and all contract documents and related materials upon request by the Authority. The Lead Agency shall retain the usual rights of the owner of a public contract including the authority to approve changes and make payments. However, any changes to the Project which would result in the final project cost deviating, by ten or more percent, from the Authority's budget amount for the Project, must be approved by the Authority in advance of those changes being made, regardless of the fact that the Authority will not be paying for them.

- c. The Lead Agency shall be responsible for all traffic management, including public notification, during construction of the Project.
- d. The Lead Agency shall operate and maintain the improvements during and after completion of construction.
- e. The final cost of the Project shall be that amount necessary to complete the Project including any unanticipated work incorporated into the Project by change orders and amendments executed by the Lead Agency. The Lead Agency shall be responsible for all Project costs in excess of the RTA funds contributed to the Project.
- f. The Lead Agency shall exercise its power of eminent domain, if necessary, to acquire property needed for the Project.
- g. The Lead Agency will be responsible for assuming all risks associated with the Project except those that are assigned to another agency or jurisdiction that has agreed to that assumption.
- h. The Lead Agency shall require its contractors performing any portion of the Project to name the Authority as additional insured and additional indemnitee in all of the Lead Agency's contracts for the Project. The Lead Agency shall also require its contractors to name the Authority as an additional beneficiary in any performance and payment related assurances posted for the Project.
- i. The Lead Agency shall be responsible for preparing and submitting to the Authority, within the first week of each month or as otherwise specified herein, invoices for payment signed by a duly authorized representative of the Lead Agency and which include sufficient background information documenting payments made to contractors, vendors or any other eligible costs identified in this Agreement or the RTA's Administrative Code. The Lead Agency must retain and certify all vendor receipts, invoices and any related Project records as needed and ensure that they are available for review for a minimum of five (5) years after final payment is made unless otherwise specified herein.

The Lead Agency shall be responsible for submitting a status report describing its progress and adherence to the Project scope, schedule and budget with each request for payment.

6. Responsibilities of Authority

- a. Upon receipt of authorized payment requests, the Authority shall convey to the Lead Agency RTA funds in the amount specified in Exhibit A on a reimbursement basis unless otherwise specified herein. All payments and reimbursements shall follow the policies outlined in the RTA's Administrative Code.
- b. Reimbursements will generally be based on the Project schedules established by the Lead Agency and contained in Exhibit A.
- c. The RTA staff will review all payment requests to confirm that the request is for reimbursement of costs incurred by the Lead Agency for the Project. If the Authority determines that additional information is needed, the Lead agency will be notified of the request for additional information within five days of the receipt of the invoice by RTA.
- d. Upon approval of the request by RTA, the invoice will be processed for payment within ten working days of the invoice submittal.
- e. RTA shall provide all necessary cooperation and assistance to its fiscal agent to process all payment requests from the Lead Agency.

7. Termination. 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 either party from liabilities or costs already incurred under this Agreement.

8. 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 board or body, 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 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 party 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 the indemnified party, its consultants, contractors or employees.

9. Non-assignment. Neither party to this Agreement shall assign its rights under this Agreement to any other party without written permission from the other party to this Agreement.

10. Construction of Agreement.

- a. Entire agreement. This instrument constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. Any exhibits to this Agreement are incorporated herein by this reference.
- b. Amendment. This Agreement may be modified, amended, altered or changed only by written agreement signed by both parties.
- c. Interpretation. All provisions of this Agreement shall be construed to be consistent with the intention of the parties as expressed in the Recitals hereof.
- d. Captions and Headings. The headings used in this Agreement are for convenience only and are not intended to affect the meaning of any provision of this Agreement.
- e. Severability. In the event that any provision of this Agreement or the application thereof is declared invalid or void by statute or judicial decision, such action shall have no effect on other provisions and their application, which can be given effect without the invalid or void provision or application, and to this extent the provisions of the Agreement are severable. In the event that any provision of this Agreement is declared invalid or void, the parties agree to meet promptly upon request of the other party in an attempt to reach an agreement on a substitute provision.

11. Ownership of Improvements. Ownership and title to all materials, equipment and appurtenances installed pursuant to this Agreement shall automatically vest in the Lead Agency upon completion of the Project.

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

13. 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 employment relationship between the parties or create any employer-employee relationship between the County and RTA employees, or between RTA and County employees. Neither party shall be liable for any debts, accounts, obligations nor other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for itself or any of its employees.

14. No Third Party Beneficiaries. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or affect the legal liability of either party to the Agreement by imposing any standard of care different from the standard of care imposed by law.

15. 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.

a. **Anti-Discrimination.** The provisions of A.R.S. § 41-1463 and Executive Order Number 99-4 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.

c. **Workers' Compensation.** An employee of either party shall be deemed to be an "employee" of both public agencies, while performing pursuant to this Agreement, only for purposes of A.R.S. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers' compensation benefits, which may accrue. Each party shall comply with the employee notice provisions of A.R.S. §§ 23-906(D) and 23-1022(E).

d. **No Scrutinized Business Operations.** Pursuant to A.R.S. §§ 35-391.06 and 35-393.06, each of the Parties certifies that it does not have a scrutinized business operation, as defined in A.R.S. §§ 35-391 and 35-393, in either Sudan or Iran.

e. **Federal Immigration Laws - A.R.S. § 41-4401.** Each party and each subcontractor it uses warrants its compliance with all federal immigration laws and regulations that relate to its employees, and compliance with A.R.S. § 23-214(A).

16. 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.

17. 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 failure of facilities, breakage or accident to machinery or transmission facilities, weather conditions, flood, earthquake, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, strike, lockout, labor dispute, boycott, material or energy shortage, casualty loss, acts of God, or action or non-action by governmental bodies in approving or failing to act upon applications for approvals or permits which are not due to the negligence or willful action of the parties, order of any government officer or court (excluding orders promulgated by the parties themselves), and declared local, state or national emergency, which, by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligations by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

18. Notification. All notices or demands upon any party to this Agreement shall be in writing, unless other forms are designated elsewhere, and shall be delivered in person or sent by mail addressed as follows:

The RTA:

Gary Hayes, Executive Director
Regional Transportation Authority
177 N. Church Street, Suite 405
Tucson, AZ 85701

South Tucson:

Enrique Serna, City Manager
City of South Tucson
1601 S. 6th Avenue
Tucson, AZ 85713

19. Remedies. Either party may pursue any remedies provided by law for the breach of this Agreement. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or in equity or by virtue of this Agreement.

20. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together 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.

In Witness Whereof, the City of South Tucson has caused this Agreement to be executed by the Mayor of the City of South Tucson, upon resolution of the Mayor and Council attested to by the City Clerk, and the Authority has caused this Agreement to be executed by its Chair of the Board.

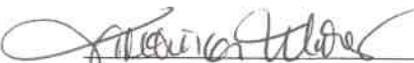
SOUTH TUCSON:



Mayor Jennifer Eckstrom

01.30.2012
Date

ATTEST:



Veronica B. Moreno, City Clerk

01.31.2012
Date

REGIONAL TRANSPORTATION AUTHORITY OF PIMA COUNTY:

Jennifer Eckstrom, Board Chair

Date

ATTEST:

Gary Hayes, Executive Director

Date

ATTORNEY CERTIFICATION

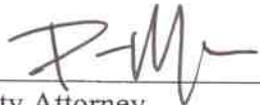
The foregoing Agreement by and between the Regional Transportation Authority of Pima County and the City of South Tucson has been reviewed pursuant to A.R.S. § 11-952 by the undersigned who have determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those parties to the Agreement.

Regional Transportation Authority of Pima County:

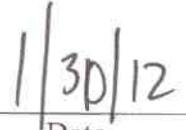
Attorney for the Authority

Date

City of South Tucson:



City Attorney



Date