



Contract Number: CT-PR-12*733-01
 Effective Date: 03-01-2013
 Term Date: 03-01-2018
 Cost: 0
 Revenue: -
 Total: 0 NTE: _____
 Action
 Renewal By: 01-01-2018
 Term: 03-01-2018
 Reviewed by: JB

BOARD OF SUPERVISORS AGENDA ITEM SUMMARY

Requested Board Meeting Date: April 9, 2013

ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:

This Amended and Restated Intergovernmental Agreement amends City Contract #0117-06 and County Contract #137537-06 that contemplating that the County and City would cooperate in the acquisition, design and construction of a community park in the southeast area of the Tucson metropolitan area using bond proceeds allocated to the project in the County's general obligation bond program.

The IGA is completely superseded and replaced with this amended and restated agreement.

PRC 02-10-090302 PRC 02-05-05 20


Procure Dept 03/27/13 PM 1:42

CONTRACT NUMBER (If applicable): #12*733

STAFF RECOMMENDATION(S):

Staff respectfully recommends this Amended and Restated IGA be approved

CORPORATE HEADQUARTERS: Natural Resources, Parks and Recreation

TO CHH 4-1-13
 COB 4-2-13
 Agenda 4-9-13 (4)
 Addendum

CLERK OF BOARD USE ONLY: BOS MTG. April 9, 2013

ITEM NO. _____

PIMA COUNTY COST: ___ and/or REVENUE TO PIMA COUNTY: ~~\$6,000,000.00~~ 0.00

FUNDING SOURCE(S): Bond Funds
(i.e. General Fund, State Grant Fund, Federal Fund, Stadium D. Fund, etc.)

Advertised Public Hearing: April 9, 2013

		YES	X	NO
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Board of Supervisors District:

1		2		3		4		5		All	xxx
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IMPACT:

IF APPROVED:

The County will be obligated to spend \$6 million.

IF DENIED:

The County will not be obligated to spend \$6 million.

DEPARTMENT NAME:

CONTACT PERSON: Evelyne Thorpe TELEPHONE NO.: 877-6230

Project Management: The City of Tucson will manage the project, pursuant to intergovernmental agreements between the City of Tucson and Pima County and between the City of Tucson and Vail School District.

Future Operating and Maintenance Costs: The City of Tucson will own and operate the completed project. The additional annual operation and maintenance cost for this project is estimated to be \$469,200. This cost will be funded through the City of Tucson Operating Budget - General Fund.

Pima County Ordinance No. 2004-18(V11)(D)(1)(c)(4.32), City of Tucson Parks, Southeast Community Park.

- C. The IGA provides that the City will, using the County funds, carry out the Project and thereafter own and operate the Park.
- D. The parties have decided that, instead, the County will carry out the Project with the currently remaining 2004 Bond funding of \$5,858,016 and thereafter own, operate and maintain the Park. The County is in the process of acquiring approximately 289 (per the Arizona State Land Department public auction notice) acres of property for the Project from the State of Arizona.

Now, therefore, the parties agree as follows:

- 1. Amendment and Restatement. The IGA will be deemed to be completely superseded and replaced with this amended and restated agreement (this "Agreement") as of the Effective Date set forth below.
- 2. Project. The County will carry out the Project generally as described in the Bond Ordinance, and will thereafter own, operate and maintain the Park pursuant to normal County practices. The County in consultation with the City will be responsible for scheduling of the Project.
 - a. Master Plan. After acquiring the land for the Park, the County will develop a detailed Master Plan for the phased development of the entire site. The Master Plan will address City Parks and Recreation Department comments and recommendations throughout the planning process and address input received from the community (including Ward IV Council Office, area residents, the Vail School District, the Rita Ranch, Mesquite Ranch and Civano Neighborhood Associations, and other key community stakeholders). A critical component/deliverable of the Master Plan will be a phasing plan for development of the entire site including a plan for the protection of the historic Esmond Station and costs associated with each phase.
 - b. City Liaison. The City will provide a liaison to assist the County with the master planning, community participation process and each phase of development. The County shall submit to the City a quarterly Progress Report in the format shown on Exhibit A attached hereto.
 - c. Initial Development. County will use the allocated funding that remains after the land acquisition and the master planning process to design and, if sufficient funding is left, build a portion of the first phase of the park development.
 - d. Development Phases. County will construct the various phases of the Master Plan as funding becomes available and will submit the remaining unconstructed phases for future bond funding.
- 3. Effective Date; Term. This amendment will be deemed to have been effective as of March 1, 2013 (the "Effective Date") even if executed by one or both parties after that date, and will stay in effect until the earlier of the date that the master planning and initial development of the Park, as described above, is completed, and March 1, 2018.

4. General Terms.

- a. Conflict of Interest. This Agreement can be terminated for a conflict of interest as set forth in A.R.S. § 38-511, the relevant portions of which are hereby incorporated by reference.
- b. No Joint Venture. It is not intended by this Agreement to, and nothing contained in this Intergovernmental Agreement will be construed to, create any partnership, joint venture or employment relationship between the parties or create any employer-employee relationship between County and any City employees, or between City and any County employees. No party shall be liable for any debts, accounts, obligations or 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.
- c. No Third Party Beneficiaries. Nothing in this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement, or affects the legal liability of any party to this Agreement, by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.
- d. Non-Appropriation. This Agreement may be terminated if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining the County's or City's obligations under this Agreement.
- e. Indemnification. Each party (as Indemnitor) agrees to indemnify, defend and hold harmless the other party (as Indemnitee) from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.
- f. Compliance with Laws. The parties will comply with all applicable federal, state and local laws, rules, regulations, standards and executive orders, without limitation to those designated within this Agreement.
- g. Anti-Discrimination. The provisions of A.R.S. § 41-1463 and Executive Order 75-5, as amended by Executive Order 99-4, issued by the Governor of the State of Arizona are incorporated by this reference as a part of this Intergovernmental Agreement as if set forth in full herein.
- h. 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.
- i. Compliance with Bond Requirements. County agrees to comply with all applicable provisions of Pima County Code Chapter 3.06, "Bonding Disclosure, Accountability, and Implementation" and of the Bond Ordinance, as they now exist or may hereafter be amended.
- j. Waiver. Waiver by any party of any breach of any term, covenant or condition herein contained will 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.
- k. Force Majeure. A party will 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" means, 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 will exercise due diligence to remove such inability with all reasonable dispatch.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties have affixed their signatures to this Agreement on the dates written below.

PIMA COUNTY:

[Signature]
Chairman of the Pima County Board of Supervisors

APR 09 2013
Date

CITY OF TUCSON:

[Signature]
Jonathan Rothschild, Mayor
Name and Title (Please Print)

March 27, 2013

Date ATTEST: [Signature]

ATTEST

[Signature]
Clerk of Board

APR 09 2013
Date

¹¹
[Signature] Approved as to form:
[Signature] 3/15/13, 2013
City Attorney

APPROVED AS TO FORM:

[Signature]
Deputy County Attorney
4-2-2013
Date

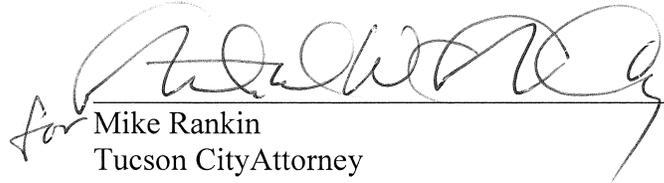
APPROVED AS TO CONTENT

[Signature]
Department Head
3/12/13
Date

(if required by County Department or delete)

INTERGOVERNMENTAL AGREEMENT DETERMINATION

The foregoing Intergovernmental Agreement between the City of Tucson and the Pima County Department of Natural Resources, Parks and Recreation, has been reviewed pursuant to A.R.S. § 11-952D by the undersigned, who has 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.


for Mike Rankin
Tucson City Attorney



**Pima County
Intergovernmental Agreement**

Exhibit A to
Exhibit A to
Resolution No.
22021

Quarterly Progress Report

IGA Contract Number:

IGA Title:

Participant Name:

Reporting Period:

**Reimbursement
Request Attached:**

Yes

No

**Reimbursement
Submittals on Schedule:**

Yes

No

**IGA Scope Item
Progress:**

Overall Project

Start Date

Finish Date

Percent Complete

Land Acquisition

Start Date

Finish Date

Percent Complete

Planning

Start Date

Finish Date

Percent Complete

Design

Start Date

Finish Date

Percent Complete

Environmental/Regulatory Compliance

Start Date

Finish Date

Percent Complete

Construction

Start Date

Finish Date

Percent Complete

Public Art

Start Date

Finish Date

Percent Complete

Summary of Current Project Issues and Solutions:

Prepared by

Date

CERTIFICATE OF CLERK
City of Tucson

State of Arizona }
County of Pima } ***ss***

I, Roger W. Randolph, the duly appointed and qualified City Clerk of the City of Tucson, Arizona, do hereby certify pursuant to Tucson Code § 2-102 that the following is a true and correct copy of Mayor and Council Resolution No. 22021, which was passed and adopted by the Mayor and Council of the City of Tucson, Arizona, at a meeting held on March 27, 2013, at which a quorum was present.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the City of Tucson, Arizona on April 1, 2013.

*Total of 2 page(s) certified.
(Exhibits not included)*



City Clerk

ADOPTED BY THE
MAYOR AND COUNCIL

March 27, 2013

RESOLUTION NO. 22021

RELATING TO PARKS AND RECREATION: ADOPTING AN AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF TUCSON AND PIMA COUNTY AND REQUESTING PIMA COUNTY TO AMEND THE 2004 PIMA COUNTY BOND IMPLEMENTATION ORDINANCE, CHANGING THE PROJECT SCOPE FOR THE SOUTHEAST COMMUNITY PARK BY REALLOCATING DEDICATED FUNDS IN THE AMOUNT OF SIX MILLION DOLLARS (\$6,000,000) OF PROJECT FUNDING PRIMARILY FOR LAND ACQUISITION AND MINIMAL FIRST PHASE DEVELOPMENT OF THE PROJECT; AND DECLARING AN EMERGENCY.

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

SECTION 1. The Amended and Restated Intergovernmental Agreement between the City of Tucson and Pima County amending the 2004 Pima County Bond Implementation Ordinance changing the project scope for the Southeast Community Park by reallocating dedicated funds in the amount of six million dollars (\$6,000,000) of project funding primarily for land acquisition and minimal first phase development of the project, attached hereto as Exhibit A, is approved.

SECTION 2: The Pima County Board of Supervisors is hereby requested to amend the 2004 Pima County Bond Implementation Ordinance as follows:

PR-4.32. Southeast Community Park

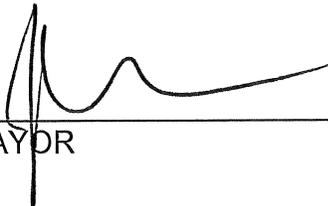
Change the scope of the project to reallocate the \$6,000,000 of project funding primarily for land acquisition and minimal first phase development of project.

Amend the 2005 Intergovernmental Agreement between the City of Tucson and Pima County for the land acquisition and first phase development of the park.

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 of Tucson 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, March 27, 2013.



MAYOR

ATTEST:



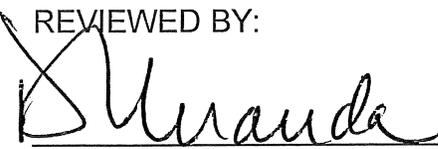
CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

REVIEWED BY:



CITY MANAGER

DLD:mgs
3/19/13