AG Contract No: KR03-0232TRN
ADOT ECS File No 02-197
Project. TEA – TUC – 0(050)A, 51)A
TRACS No SL 493 02D, 01X, 01C
Item No 855.00
Section: Barrio Anita Landscaping
and Artistic Enhancements

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF TUCSON

THIS AGREEMENT is entered into 6-3, 2003, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF TUCSON, acting by and through its MAYOR and CITY COUNCIL the ("City")

I. RECITALS

1 The State is empowered by Arizona Revised Statutes Section 11-952 and 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 City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City

3 Congress has authorized appropriations for, but not limited to, twelve eligible categories of transportation enhancement activities

4 Such project within the boundary of the City has been selected by the City; the survey of the project has been completed, and the plans, estimates and specifications will be prepared and, as required, submitted to the Federal Highway Administration (FHWA) for its approval

5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended

6. The City, in order to obtain federal funds for the construction of the project, is willing to provide City funds to match federal funds in the ratio required or as finally fixed and determined by the FHWA

NO. 26029
Filed with the Secretary of State
Date Filed: 06/03/03
Janice K. Brewer
Secretary of State
By: Diane J. Graenewald

CITY OF TUCSON CONTRACT NO. 0485-03

EX A TO RESOLUTION NO. 19573

7. The work embraced in this agreement to landscape and artistically enhance three noise walls adjacent to the Barrio Anita community, two facing the Barrio Anita neighborhood and one facing the freeway, on the northbound Interstate 10 frontage road between St Mary's Road and Speedway Boulevard, and the estimated costs are as follows:

Design TRACS No. SL 493 02D	
Estimated Design Cost	$ 51,000.00
Federal Aid Funds @ 94 3%	$ 48,093.00
City Funds @ 5 7%	$ 2,907 00
Fabrication of Murals TRACS No. SL 493 01X	
Estimated Fabrication Cost (incl 15% CE cost)	$ 210,800.00
Federal Aid Funds @ 94.3%	$ 198,784.00
City Funds @ 5.7%	$ 12,016.00
Construction TRACS No. SI 493 01C	
Estimated Construction Cost (incl 15% CE cost)	$ 238,200.00
Federal Aid Funds @ 94.3%	$ 224,623.00
City Funds @ 5.7%	$ 13,577.00
Total Funds for Design, Fabrication and Construction	$ 28,500.00

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1 The State will:

a. Submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for design, fabrication and construction

b. If such projects are approved by FHWA and the funds are available, the City will under the Certification Acceptance procedures advertise for, receive and open bids, and enter into a contract(s) with a firm(s) to whom the award is made for the construction of the project. Such project will be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions, and Standard Specifications for Road and Bridge Construction of the City. The State will enter into a Joint Project Agreement (JPA) with FHWA on behalf of the City covering the work embraced in said construction contract and the design and fabrication contracts and will request the authorized federal funds available, including construction engineering and administration costs

c. After award of design, fabrication and construction contracts by the City, make progress payments to the City for the direct costs of the Project, plus engineering, within 30 days after receipt and approval of an invoice.

2. The City will.

a Should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the City shall be obligated to incur any expenditure in excess

b After the award of the contracts, invoice the State for progress payments for direct actual cost of the construction of the project, plus construction engineering, not to exceed the total estimated cost of $500,000. Be responsible for any contractor claims for extra compensation due to delays or what ever reason attributable to the City

c Acquire the necessary right of way required for project construction and hereby certifies that all necessary rights of way have been or will be acquired prior to advertisement for bids and shall remove from the proposed right of way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the project area and hereby certifies that all obstructions and encroachments have been or will be removed there from prior to the start of construction.

d. Shall furnish all water for landscape installation during the construction phase, a point of connection (POC) for the irrigation system, and all water thereafter necessary to properly maintain the landscape, all at the City expense.

e Upon completion of construction, shall provide for, at its own cost and as an annual item in its budget for perpetual and proper maintenance of all I-10 Barrio Anita community improvements, including, but not limited to:

- maintaining healthy landscaping
- operation and cost of irrigation
- operation and cost of lighting
- removal and treatment of weeds
- safe access to pedestrian and bicycle facilities
- community and freeway side fabricated murals on the freeway noise walls as required to maintain the safety and visual quality as the project was designed, and established at the completion of the project.

f. Install an ADOT-provided plaque identifying the project as part of the Transportation Enhancement Program.

g. Shall allow free public access to the project improvements during normal business hours

III. MISCELLANEOUS PROVISIONS

1 The State assumes no financial obligation or liability under this agreement. The City assumes full responsibility for the design, fabrication, plans and specifications, reports, the engineering in connection therewith, and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid, that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the City and that the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the City/County, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation or attorneys' fees.

2 The cost of the design, fabrication, construction and construction engineering work covered by this agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and

determined by FHWA as stipulated in this agreement Therefore, City agrees to furnish and provide the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work, provided, however, any provisions in this agreement for maintenance shall be perpetual

4 This agreement shall become effective upon filing with the Secretary of State

5 This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 pertaining to State audit are applicable to this contract. In the event of such an audit, the City will bear all costs associated therewith.

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8 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:

Department of Transportation Joint Project Administration 205 S. 17th Avenue - 616E Phoenix, AZ 85007	City of Tucson Transportation Director P.O. Box 27210 Tucson, AZ 85726-7210

9. Attached hereto and incorporated herein is the written determination of each party's legal counsel 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.

CITY OF TUCSON, ARIZONA

By_____
ROBERT E. WALKUP
Mayor

STATE OF ARIZONA
Department of Transportation

By_____
SUZAN TELLEZ
Contract Administrator

ATTEST:

By_____
KATHLEEN S. DETRICK
City Clerk

02-197 doc
29Jan03 rmh

ADOPTED BY THE
MAYOR AND COUNCIL
MAY 05 2003

RESOLUTION NO 19573

RELATING TO INTERGOVERNMENTAL AGREEMENTS; APPROVING AND AUTHORIZING THE INTERGOVERNMENTAL AGREEMENT WITH STATE OF ARIZONA FOR THE DESIGN, CONSTRUCTION AND MAINTENANCE OF THE BARRIO ANITA NOISE WALL MURALS AND PEDESTRIAN REST AREA; AND DECLARING AN EMERGENCY.

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

SECTION 1. The Intergovernmental Agreement with the State of Arizona for the Design, Construction and Maintenance of the Barrio Anita Noise Wall Murals and Pedestrian Rest Area, attached hereto as Exhibit A, is approved.

SECTION 2. The Mayor is hereby authorized and directed to execute said Intergovernmental Agreement for and on behalf of the City of Tucson 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 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, MAY 05 2003

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

REVIEWED BY:

CITY MANAGER

EU:csv
04/17/2003 3:17 PM

Certificate of Clerk

• *City of Tucson* •

State of Arizona
County of Pima } *ss*

I, Kathleen S. Detrick, the duly appointed and qualified City Clerk of the City of Tucson, Arizona, do hereby certify that the foregoing is a true and correct copy of Resolution No. 19573 which was passed and adopted by the Mayor and Council of the City of Tucson, Arizona, at a meeting held on May 5, 2003, at which a quorum was present, by the affirmative vote of not less than five-sixths of the Council, taken by ayes and noes.

In Witness Whereof, *I have hereunto set my hand and affixed the seal of the City of Tucson, Arizona on May 15, 2003.*

Total of 2 page(s) certified.

Kathleen S. Detrick
City Clerk

JPA 02-197

APPROVAL OF THE CITY OF TUCSON ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF TUCSON and declare this agreement to be in proper form and within the powers and authority granted to the City 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 17 day of April, 2003.

City Attorney

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE 602.542.8859

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR03-0232TRN (**JPA 02-197**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED May 27, 2003.

TERRY GODDARD
Attorney General

Susan Davis

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

/ss

att.

1275 WEST WASHINGTON, PHOENIX, ARIZONA 85007-2926 • PHONE 602.542.1680 • FAX 602.542.3646