Board of Supervisors Memorandum

June 16, 2015

Ordinance Updating and Improving the Pima County Code, Chapter 3.06, Bonding Disclosure, Accountability and Implementation

I. Background

In preparation for the May 20, 1997 bond election, the Board of Supervisors created a new section in the County Code, Chapter 3.06, Bonding Disclosure, Accountability and Implementation, commonly referred to as the Truth in Bonding Code. The intent of this chapter of Pima County's Code is to provide voters, prior to early voting, with sufficient descriptions of the projects we are committing to build, provide easily accessible information on a regular basis regarding the status of completing such projects, and provide multiple opportunities for the public to provide input on any substantial modifications (commonly known as bond ordinance amendments) to projects that may become necessary over time.

The requirements contained in this chapter of the Code were voluntarily committed to by the Board of Supervisors and are above and beyond what is required by the State for bond elections. We continue to be unaware of any governing body in the State of Arizona that has voluntarily committed itself to more strict standards of transparency and accountability, nor undertaken any more demanding procedures.

Findings from the 2013 audit of the County's general obligation bond programs by the State's Auditor General emphasized the uniqueness of the County's bond programs, that bond proceeds were fairly used for voter-authorized purposes, and bond projects benefited citizens throughout Pima County approximate to taxes paid. Completion of this audit was easily facilitated due to the County's Code, which requires detailed bond ordinances, a transparent process with multiple opportunities for public input on substantial modifications to projects, and that adoption of bond ordinances and any substantial changes must occur at public meetings for which there are records.

In preparation for the 2015 bond election, staff has prepared updates to this chapter of the County Code. These updates are based upon lessons learned since the last update on April 2, 2004 and several discussions at Bond Advisory Committee meetings concerning project implementation by cities and towns, as well as requests from the City of Tucson.

Attachment 1 is an ordinance, which if adopted by the Board of Supervisors, will continue to improve this chapter of the Code. It is provided in legislative style; language to be deleted is struck out (~~example~~) and new language is underlined (<u>example</u>). Notice of the Board's June 16, 2015 public hearing concerning these Code updates was published in the *Daily Territorial* on June 1, 2015.

Attachment 2 is a sample Intergovernmental Agreement (IGA). The Code currently requires that Pima County enter into IGAs with cities, towns and tribal governments prior to initiating bond projects that will be designed and built by these jurisdictions. This sample IGA incorporates the proposed updates to the Code.

Both the Code updates and the sample IGA were provided to the Bond Advisory Committee for review and comment. We received questions and comments from one member and responded. These questions, comments and responses are Attachment 3.

The City of Tucson has expressed some concerns regarding a few of the requirements in the sample IGA, most of which were addressed in the current version of the sample IGA. The sample IGA itself is not a document adopted by the Board; it is provided for information only. If changes are made to this document, we will forward a revised version to the Board at that time.

II. Summary of Proposed Updates to County Code Chapter 3.06

A. Bond Implementation Plan Ordinance adopted by the Board prior to early voting

Clarification of the types of information that will be provided for each project, including the City of Tucson's request that the project information identify whether the bond funding is for one or more phases of a larger project. In addition, the ordinance would have to identify the agency responsible for operating and maintaining the facility, as well as the source of funding for operations and maintenance, if the agency is a government entity.

B. Bond Advisory Committee

Places in one location the responsibilities of the Bond Advisory Committee and the requirements for membership. Previously, some of this information was only available by reviewing past Board actions and was not located in the County Code.

C. Conservation Acquisition Commission

1. Formalizes a responsibility that the Conservation Acquisition Commission already performs to make recommendations to the Bond Advisory Committee on the amount of bond funding and location of open space properties that should be eligible for acquisition as part of future bond elections.

2. Revises the number of annual meetings to semiannual meetings rather than quarterly meetings. When the County was actively spending bond funding on open space acquisitions, the Commission often met on a monthly basis. As funds were depleted, the necessity for meetings was reduced. Semiannual meetings are necessary as the Commission is tasked with reviewing a section of the semiannual reports to the Bond Advisory Committee.

D. Monitoring and Reporting on Sold Bonds

Removes the requirement that semiannual reports to the Board be provided by January 1 and July 1. It is not possible for the Finance Department to develop the necessary data in time to meet these deadlines when the fiscal year ends on June 30 and the second quarter ends on December 31. In addition, the Code requires that the Bond Advisory Committee review these reports before they are presented to the Board, which requires additional time. The Code also requires that bond ordinance amendments be scheduled with these semiannual reports, which also require Bond Advisory Committee review; review by other jurisdictions, if necessary; and public notice. In practice, the Board has been provided these semiannual reports and ordinance amendments between late September and early October and between late March and early April.

E. Substantial Modification of an Adopted Bond Implementation Plan

1. The Code currently defines five substantial modifications that require conformance with the bond ordinance amendment process. One of these five relates to projects that require an increase or decrease in actual other revenues by 25 percent or more. In practice, this has become problematic for projects that were planned to have zero other funding because any other funding over zero, a $10,000 grant for example, is 25 percent more than zero, even if the total project cost is $2 million. Such has caused a great number of bond ordinance amendments that staff believes are unnecessary. Staff is proposing that for projects that begin with zero other funding, the minimum increase in other funding to require an ordinance amendment would be $100,000.

2. Provides more detail on the requirements to amend the bond ordinance if voters disapprove one or more of the ballot questions.

F. Design, Construction, and Equipping of County Bond Projects by Other Agencies

This section already exists in the Code and would be updated as follows:

1. Defines political subdivisions (formally also referred to as jurisdictions) and nonprofit community partners as "agencies."

2. Adds that neither the Code, nor the inclusion of a project in the bond implementation plan ordinance, gives an agency any contractual rights with respect to the project until a binding agreement is executed with the County.

3. Adds that each agency identify a single staff liaison to the County to ensure agreements and other actions related to bond projects move forward in a timely fashion.

4. Adds a requirement that the agreement between the County and the agency identify the estimated amount and source of funding for operations and maintenance.

5. Adds a requirement that the agreement between the County and the agency allows the County to conduct regular performance audits to determine if County bond-funded facilities built, operated and maintained by other agencies are maintained in good working order; and a penalty suspending the allocation of County bond funding for other not yet built projects if facilities deemed unsatisfactory are not returned to good working order within a certain timeframe.

6. Adds a requirement that the agreement between the County and the agency establish who will own the facility once built, as requested by the City of Tucson.

III. Bond Implementation Plan Ordinance for the 2015 Bond Election

As required by this chapter of the County Code, staff is currently drafting the bond implementation plan ordinance detailing the projects, project costs and project schedules for the 2015 election, as well as the financial information regarding the sale and repayment of the new bonds. We anticipate providing a draft of this plan ordinance to the Bond Advisory Committee and other interested parties in late July, with the final document transmitted to the Board for consideration at a public hearing in early September so that it can be adopted and published prior to early voting.

IV. Recommendation

I recommend the Board of Supervisors hold the necessary public hearing on July 16, 2015 and approve the proposed updates to the Pima County Code, Chapter 3.06, Bonding Disclosure, Accountability and Implementation.

Respectfully submitted,

C.H. Huckelberry
County Administrator

CHH/mjk – June 2, 2015

Attachments

c: Chair and Members, Pima County Bond Advisory Committee
Nicole Fyffe, Executive Assistant to the County Administrator
Diana Durazo, Special Staff Assistant to the County Administrator

ATTACHMENT 1

ORDINANCE NUMBER 2015-___

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF PIMA COUNTY ARIZONA AMENDING THE PIMA COUNTY CODE CHAPTER 3.06, BONDING DISCLOSURE, ACCOUNTABILITY AND IMPLEMENTATION.

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA:

Chapter 3.06 of the Pima County Code is hereby amended to read as follows:

Chapter 3.06 BONDING DISCLOSURE, ACCOUNTABILITY AND IMPLEMENTATION

3.06.010 Intent.

The board of supervisors is authorized by Arizona Revised Statutes § 35-452 to call special elections for the purpose of seeking voter authorization to incur bonded indebtedness. The board of supervisors desires to provide voters with complete information on projects, along with their estimated costs, that will be constructed from proceeds of bonded indebtedness, as well as provide voters, to the maximum extent practicable, firm assurances that these projects will be constructed within the estimated costs and time tables established by the board of supervisors. Because it is not practicable to list on a ballot question all of the projects and estimated costs that would be constructed from the sale of authorized bonded indebtedness, the board of supervisors establishes this chapter setting forth requirements for presenting general obligation and revenue bond packages to the electorate for approval and for monitoring utilization of the proceeds from authorized bonds.

3.06.020 Bond implementation plan.

Prior to the start of early voting for a special election called by the board of supervisors pursuant to A.R.S. § 35-452, the board of supervisors shall adopt by ordinance a "bond implementation plan," which shall be adopted for each bond election and question ordered by the board of supervisors pursuant to A.R.S. § 35-452. The title of the ordinance shall contain the date of the special bond election. After adoption, the ordinance shall govern the development or construction of all listed projects, including the approximate project cost and the proposed construction schedule, unless the ordinance is amended pursuant to Section 3.06.0~~50~~70. The ordinance shall contain the following information:

A. A complete list of all projects to be constructed or acquired by proceeds from the sale of authorized bonds. The project list shall identify each project by name and location and provide a short narrative project description.
   1. For capital construction projects, the following information shall also be provided for each project:
      a. A project scope of work containing a description of the facility to be constructed, including the size or capacity and whether construction is for a new facility or an expansion, rehabilitation or reconstruction of an existing facility, and whether the project is phased and if so which phases are being funded.
      b. The purpose and specific benefits to be achieved by construction of the project.
      c. A ~~construction~~ project schedule ~~that identifies~~ by major task (i.e. land acquisition, planning/design~~/right-of-way~~, construction~~; other~~), as well as the implementation periods ~~and by fiscal year the~~ projected for starting and ~~completion dates~~ completing the project~~dates~~. Implementation periods are blocks of two fiscal years each.

d. The agency responsible for future operations and maintenance of the facility, and ~~T~~the estimated future operating and maintenance costs~~;~~ and source of funding for those costs if the implementing agency is a governmental entity. ~~what jurisdiction or county department will be responsible for these costs, and whether ability to fund these costs should impact scheduling of the project.~~

e. The agency responsible for managing project design and construction.

2. For each land acquisition project related to open space, trails or historic/cultural preservation, the following information shall be provided:

a. An estimate of the number of acres to be acquired ~~and any special designation relating to the property such as recreational, open space planning, floodplain, or historic/cultural preservation~~.

b. The desirable location of the property by section, township, and range, ~~the~~ assessor parcel number, ~~and existing zoning of the property.~~ or reference to a map that is readily accessible to the public.

c. The benefits to be achieved by the acquisition.

d. The estimated future management and security costs, and identification of the management agency if other than the county.

B. The total estimated cost of each project or acquisition, total estimated costs by major task, a discussion of how estimated costs were derived, and analysis of the potential for actual costs to increase or decrease from estimated costs.

C. The total estimated amount and source (federal or state aid, local governments, other county revenues, private sources) of any other revenues that may be obtained for the project or revenues that are required as cost sharing from other governmental entities or private parties, including an assessment of the certainty or uncertainty that other sources will be secured and options that would be available if the other sources are not secured.

D. A detailed strategy for managing the sale of bonds, including discussion of the factors upon which the county will base decisions on the timing, size, and terms of bond sales.

E. For general obligation bonds, discussion of commitments to manage the sale of bonds within limits on secondary property tax rates and analysis of how approval and sale of general obligation bonds could impact actual property taxes paid for debt service.

F. For revenue bonds, a discussion of sources of revenues that will be used to service bond debt and whether fees will be raised, and by how much, if revenue bonds are approved and sold.

3.06.030 Advance publication of bond implementation plan.

A bond implementation plan adopted pursuant to this chapter shall be published at least once in a newspaper of general circulation in the county prior to the start of early voting for the special bond election. The publication shall set forth the ordinance containing the bond implementation plan adopted by the board of supervisors. Upon adoption, the board of supervisors shall also publish the bond implementation plan on the county's web site prior to the start of early voting for the special bond election.

3.06.040 Pima County bond advisory committee: Capital planning, program and implementation review.

A. ~~The duties and responsibilities of the Pima County bond advisory committee as adopted by the board of supervisors on July 15, 2003, are expanded to include monitoring and review of~~

~~implementation of the bond implementation plan.~~The bond advisory committee shall have a total of 25 members, appointed as follows:

1. 15 members, 3 appointed by each member of the board of supervisors;
2. 5 members, 1 appointed by each of the incorporated cities and towns within the county (if additional cities or towns are incorporated, the number of committee members will be increased as necessary to permit each incorporated city or town to have a representative);
3. 2 members, 1 appointed by the Tohono O'odham Nation and 1 appointed by the Pascua Yaqui Tribe; and
4. 3 members appointed by the county administrator.

B. The Pima County bond advisory committee members shall be appointed to a term of six years. Upon resignation of any member, the appointing authority shall appoint another member to begin a new six-year term.

C. The committee will meet as often as it deems necessary but in any event no less frequently than semi-annually.

D. Under direction of the county administrator, county staff shall prepare progress reports and otherwise brief the committee on the status of implementation of the bond implementation plan, with special attention paid to major issues impacting implementation of the bond improvement plan.

E. The committee shall review and make recommendations to the board of supervisors on all proposed amendments to the bond implementation plan.

F. The Committee shall review and approve the semiannual progress reports on the bond implementation plan prior to it being transmitted to the board of supervisors and published, as required by section 3.06.060.

G. The committee shall make recommendations to the board of supervisors about the amount of bond funding and projects to be included in bond implementation plans for future bond elections.

3.06.050 Conservation acquisition commission.

A. The board of supervisors hereby establishes the conservation acquisition commission.

B. The conservation acquisition commission shall have a total of eleven members, appointed as follows:

1. Five members, one appointed by each member of the board of supervisors;
2. Two members appointed by land conservation organizations active in Pima County;
3. One member appointed from the Pima County natural resources, parks and recreation commission;
4. One member appointed by the local board of realtors;
5. One member appointed by the ranching community; and
6. One member appointed by the county administrator.

C. Appointments to the commission are for a term of eight years. Upon the resignation of any member, the appointing authority shall appoint another member to begin a new eight-year term.

D. The duties and responsibilities of the commission are as follows:

1. Oversee and monitor all open space bond acquisitions placed before the board of supervisors for consideration including, but not limited to, acquisitions funded by general obligation bonds.
2. Make recommendations to the board of supervisors and the Pima County bond advisory committee for priorities in the scheduling of open space acquisitions and periodic assessment and change in priorities as necessary.

3. Make recommendations to the board of supervisors and the Pima County bond advisory committee on any aspects of open space land management, including management of lands acquired for open space.
4. Make recommendations to the county administrator, and the Pima County bond advisory committee on any aspect relating to internal county management of the open space acquisition process.
5. Make recommendations to the Pima County bond advisory committee on the amount of bond funding and location of open space property to include in bond implementation plans for future bond elections.

E. The commission will meet as often as it deems necessary but in any event no less frequently than ~~quarterly~~ semi-annually.

F. Under direction of the county administrator, county staff shall prepare progress reports and otherwise brief the commission on the status of implementation of the conservation bond program component of the bond implementation plan, with special attention paid to major issues impacting implementation of the conservation bond program.

G. The commission shall review and make recommendations to the board of supervisors on all potential amendments to conservation bond program components of the bond implementation plan.

H. The commission shall review and approve the semiannual progress reports on the conservation bond program component of the bond implementation plan prior to it being transmitted to the Pima County bond advisory committee as required by Section 3.06.040.

3.06.060 Monitoring and reporting on sold bonds.

The county administrator shall prepare semiannual reports on the progress of the bond implementation plan implementation which shall be transmitted to the board of supervisors for review. ~~Upon transmittal to the board of supervisors on or before January 1 and July 1, s~~Semiannual progress reports shall also be posted on the county's web site. Progress reports shall be prepared and transmitted by the county administrator until a bond implementation plan is determined by the board of supervisors to have been completed. Each progress report shall contain the following information on the status of every project or program contained in the plan:

A. The project implementation schedule status, including design, construction, acquisition, and completion.

B. Any estimated substantial variances from the project cost and revenue sources in the adopted bond implementation plan.

C. Any major issues that may affect implementation of the bond implementation plan.

D. Plans and options for addressing substantial modifications in costs or revenue sources or other major issues, including the potential need for substantial modifications in the bond implementation plan as provided for in Section 3.06.070.

E. A fiscal status report, including discussion of bond sales completed and projected; interest rates and terms of completed sales; interest rates received on deposits of bond proceeds; updated projections on conditions in municipal bond markets; current debt service schedules and updated projections of secondary property tax rates for debt service; updated projections of secondary property tax rates with projected future sales of bonds; and analysis and projection of fiscal impacts of completed and projected sales of revenue bonds.

3.06.070 Substantial modification of an adopted bond implementation plan.

A. A substantial modification in the implementation of an adopted bond implementation plan shall not be made except as provided in this section.

B. For purposes of this section, "substantial modification" means any of the following:

1. An increase or decrease in total actual project costs by twenty-five percent or more.
2. An increase or decrease in actual bond costs by twenty-five percent or more.
3. An increase or decrease in actual other revenues by twenty-five percent or more~~.~~; for projects with other revenues estimated at zero, a substantial modification shall be defined as an increase in "other" (non-bond) revenues of $100,000 or more.
4. A delay in a project construction or implementation schedule of twelve months or more.
5. A delay in the scheduled years of sale of bonds of twenty-four months or more caused by changes in municipal bond market conditions or county financial conditions and necessary to maintain commitments to capping the secondary property tax rate for debt service.
6. Any project that is not constructed.
7. Any project that is added to those to be constructed.
8. Any increase or decrease in the project scope that alters the disclosed project benefits.
9. ~~All changes to a bond implementation plan necessitated by only~~If some but not all ~~a portion of the~~ proposed bond questions ~~being~~ are approved at the special election, the board of supervisors will make any changes to the projects for the approved questions that are necessary because of the failure of another question, and these will be considered "substantial modifications."

C. Cost estimates may vary, up or down, as a project proceeds through planning, design, procurement, contract award, and construction, or through appraisals and negotiations for conservation acquisitions. Variations in cost estimates do not constitute "substantial modifications." "Substantial modifications" relating only to cash amounts may occur pursuant to official action by the board of supervisors, in open session, that establish actual costs through awards of construction contracts, contract amendments or change orders, or approval of a contract for acquisition. Such board actions shall be accompanied by notice that the action will require a bond ordinance amendment.

D. Any substantial modification in the implementation of an adopted bond implementation plan requires a~~n~~ specific amendment to the ordinance that adopted the plan. The ordinance amendment must be enacted by the board of supervisors at a public hearing for which at least fifteen days' prior notice was published in a newspaper of general circulation in the county.

1. Bond ordinance amendments shall be scheduled to coincide with transmittal of the semiannual bond progress reports as required by Section 3.06.060.
2. Recommendations for bond ordinance amendments shall be reviewed by the Pima County bond advisory committee, as required by Section 3.06.040, and for conservation acquisitions by the conservation acquisition commission, as required by Section 3.06.050.
3. Substantial modifications of costs, bond funding, or other funding ordinance amendments may be scheduled for the next regular transmission of the semiannual bond progress report, provided the modifications were previously approved by the board of supervisors.
4. All other substantial modifications require amendment of the bond ordinance prior to the substantial modification.

3.06.080 Coordination with other capital planning of the county and region, and applicability to county bond projects ~~within~~ implemented by other ~~jurisdictions~~ agencies.

A bond implementation plan shall be integrated into a five year capital improvement plan to be adopted at the time the annual budget of the county is adopted. The county five-year capital improvement program shall be reported to the Metropolitan Planning Organization for all necessary coordination and integration into a regional capital plan. Any project contained within a bond implementation plan that is being implemented by a political subdivision other than the county, or by a nonprofit community partner (each an "agency"), shall conform with the requirements of this chapter. Specific program or project oversight for the purposes of conforming with this chapter shall remain with the county.

3.06.090 Design, construction, and equipping of county bond projects by other ~~jurisdictions~~ agencies.

A. Pursuant to Pima County Code Section 3.06.080, bond projects authorized by the board of supervisors in a bond implementation plan for a special bond election to be designed, constructed, or equipped by another ~~political subdivision~~ agency using county general obligation bonds to fund a project in whole or part shall be funded by the county only pursuant to ~~an~~ binding contract or intergovernmental agreement executed between Pima County and the implementing ~~subdivision~~ agency. Each such project shall be authorized and implemented with a separate ~~intergovernmental~~ agreement~~s~~. Neither this Code, nor the inclusion of a project in the bond implementation plan gives an agency any contractual rights with respect to a project until a binding agreement is duly approved and executed. The ~~intergovernmental~~ agreement shall authorize the ~~jurisdiction~~ implementing agency to design, construct, or equip the project, subject to compliance with the terms and mutual responsibilities of the parties agreed upon in the ~~intergovernmental~~ agreement. Each agency with an interest in one or more projects in the bond implementation plan is expected to designate an individual to liaison with the County with respect to bond program implementation to facilitate the development of project-specific agreements and other aspects of overall program implementation.

B. Unless waived by the board of supervisors as being in the best interests of the county and warranted by the circumstances of the bond funded project at issue, the ~~intergovernmental~~ agreement shall include, but not be limited to, provisions establishing the following ~~responsibilities of the implementing subdivision~~:

1. That the implementing ~~political subdivision~~ agency shall operate and maintain the improvements constructed by county bond funds for a period of not less than twenty-five (25) years.
2. That the implementing agency shall sufficiently fund operations and maintenance of the facility, and identify the estimated amount and source of funding for operations and maintenance of the facility.
3. That the implementing agency and the County will conduct regular performance audits to determine if facilities built, operated and maintained by the implementing agency are being maintained in good working order and are being used for the appropriate purposes; and that the County may suspend the allocation of County bond funding for other not-yet-built projects if the performance audit results in a finding of unsatisfactory and facilities are not returned to good working order within 120 days.

~~2.~~4. That the implementing ~~political subdivision~~ agency shall not charge a fee for use of the constructed improvement that is more than a fee charged by the county for a similar purpose.

~~3.~~5. That the implementing ~~political subdivision~~ agency agrees to insure the improvements constructed with county bond funds and will replace same them if they are damaged or destroyed.

~~4.~~6. That the implementing ~~political subdivision~~ agency agrees to make the improvements available to all residents of Pima County without restriction or preference to jurisdiction of residence.

~~5.~~7. That the implementing ~~political subdivision~~ agency agrees to comply with all provisions of Chapter 3.06 (Bonding Disclosure, Accountability, and Implementation) of the Pima County Code and will provide all reports to the county in a format and schedule agreed upon by the parties.

~~6.~~8. That the county will only transfer county general obligation bond proceeds to the implementing ~~jurisdiction~~ agency upon request from the implementing ~~jurisdiction~~ agency, with full documentation.

~~G~~9. That the implementing ~~political subdivision~~ agency agrees to a provision requiring compliance with federal arbitrage regulations.

~~H~~10. That the implementing ~~jurisdiction~~ agency, by action of its governing body at a public hearing, shall notify the county of events that would require an amendment of the bond implementation plan ordinance and formally request the board of supervisors to hold a public hearing on the necessary ordinance amendment.

~~I~~11. ~~That the intergovernmental agreement shall establish~~ The maximum amount of county bond funds ~~to be~~ allocated to ~~a~~ the specific project, and what entity will own improvements as they are constructed.~~, establish the stated amount as a maximum of county bond monies to be allocated to the project, and commit~~

12. That the implementing ~~political subdivision~~ agency will ~~to~~ pay for any and all project costs in excess of the allocated county bond funds.

ATTACHMENT 2

SAMPLE Intergovernmental Agreement
between Pima County and ENTITY
for the _____ Project

Intergovernmental Agreement
between
Pima County and ENTITY
for the

_____Project

This Intergovernmental Agreement (this "Agreement") is entered into by and between Pima County, a body politic and corporate of the State of Arizona ("County") and **ENTITY** (["Town"] ["City"] ["District"]) pursuant to Arizona Revised Statutes (A.R.S.) Section 11-952.

Recitals

A. County is authorized by A.R.S. § (CITE) to **[do what the project entails, substantively—e.g., build a library, improve its parks]**.

B. **ENTITY** is authorized by A.R.S. § (CITE) to **[same as above]**.

C. County and **ENTITY** may contract for services and enter into agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-952. County and **ENTITY** wish to cooperate in the design and construction of the **[describe the project, briefly]** (the "Project").

D. The cost of Project design and construction is currently estimated to be approximately **$(AMOUNT).**

E. A Special Bond Election was held in Pima County on November 3, 2015 in which the citizens of Pima County voted to approve the issuance of Pima County General Obligation Bonds to fund various public projects.

F. Pima County Ordinance No. _____, (the "Bond Ordinance") lists the Project as one of the projects to be funded by the sale of bonds authorized in the 2015 bond election (see **[insert reference to section of ordinance describing the Project]**). The Bond Ordinance allocates $_____ in bond proceeds for the Project. This amount, less 2.5%, which County will retain to recover a portion of its cost of providing administrative and financial oversight, tracking and control of the project, is referred to in this Agreement as the "Allocated Maximum Amount." **[If other County funds are being used, in addition to bond funds, these should be described and the amount included in the definition of "Allocated Maximum Amount."]**

G. **[Describe any other funding sources and give assurances about the availability of those funds. For example: "ENTITY has entered into a legally binding agreement with [NAME OF THIRD PARTY FUNDING SOURCE] pursuant to which [NAME] has agreed to contribute $_____ to the Project. ENTITY has confirmed that these funds are currently available to cover Project costs." Or "ENTITY has currently-budgeted-and-available funds to cover the estimated Project costs in excess of the Allocated Maximum Amount."]**

H. Projects funded in whole or in part with bond proceeds are subject to the guidelines for bonding disclosure, accountability and implementation of County bond projects in other jurisdictions contained in Pima County Code Chapter 3.06 and in the Bond Ordinance (the "County Bond Code").

I. **ENTITY** will advertise, award, execute and administer the design and construction contracts for the Project and will, after completion of the Project, operate and maintain it in good working order for the purposes described in the Bond Ordinance for at least twenty-five (25) years unless this requirement has been amended in the County Bond Code, in which event ENTITY will comply with the requirement as amended.

J. Construction of the Project is currently scheduled to commence on or before **[DATE]**, subject to acquisition of all necessary permits, easements and environmental clearances, and is currently estimated to be completed approximately **[NUMBER]** months after the start of construction.

Agreement

NOW THEREFORE, County and **ENTITY**, agree as follows:

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 legal and administrative matters between the parties. The above Recitals are incorporated into and are a part of this Agreement.

2. **Project.** The Project is described in the Bond Ordinance as follows:

   [Insert Project description from Bond Ordinance here]

3. **Design and Construction Responsibilities. ENTITY** will design and construct the Project in accordance with the plans and specifications cooperatively reviewed by the parties, as described below.

   a. *Standards*. **ENTITY** will design and construct the Project in compliance with all applicable building standards and codes, in compliance with Title 34 of Arizona Revised Statutes ("Title 34"), and in a good and workmanlike manner.

b. *Public Art*. **ENTITY** will manage the Pima County Public Art Program for the Project in compliance with the Pima County Board of Supervisors Policy C3.3 and Pima County Administrative Procedure 3-16. **ENTITY** will maintain all public art incorporated into the Project in good working order for twenty-five (25) years from project completion, as part of its maintenance obligation under Section 12 below unless this requirement has been amended in the County Bond Code, in which event ENTITY will comply with the requirement as amended.

c. *Environmental Compliance*. **ENTITY** will prepare and incorporate into the planning, design, and construction of the Project, compliance with all applicable local, state and federal environmental requirements, including but not limited to hydrologic and geotechnical investigations, the Pima County Native Plant Preservation Ordinance, protection of species identified by the Arizona Game & Fish Department and the U.S. Department of Fish and Wildlife Service as being endangered, threatened, or of concern, and the National Pollution Discharge Elimination System (including preparation of a Storm Water Pollution Prevention Plan).

d. *Cultural Resources*. **ENTITY** will consider potential impacts to cultural and historical resources in the Project planning and design phases through inventory, evaluation and impact assessment, and will seek to avoid impacts to these resources in accordance with applicable local, state, and federal historic preservation laws and regulations. If impacts are unavoidable, **ENTITY** will prepare a mitigation treatment plan in consultation with Pima County, the State Historic Preservation Office, and other agencies as appropriate, and will implement such plan prior to and during construction and subsequent maintenance and operation of the Project.

4. **Project Schedule. ENTITY** will prepare a project schedule (the "Project Schedule") showing the anticipated timing and duration of each stage of design, procurement, and construction. **ENTITY** will provide a preliminary Project Schedule to County within thirty (30) days after execution of this Agreement, and will update the schedule periodically as the Project progresses.

a. *Content of Project Schedule*. The Project Schedule will include the anticipated date(s) of all stages of Project planning, design, procurement, permitting, land acquisition if required, and construction, and will show the anticipated dates and amounts of requests from **ENTITY** for reimbursement of project expenses incurred and paid by **ENTITY** ("Reimbursement Requests"). The procurement information will include dates for publication of any solicitation(s), date of the pre-bid conference if any, deadline(s) for submitting bids or proposals, date of bid opening, date of completion of evaluation process and recommendation for award, anticipated date of contract execution, and any other dates County requests.

b. *Effect of Delays*. **ENTITY** will promptly notify County at any time that **ENTITY** becomes aware of a potential Project delay that may require

amendment of the Project Schedule by one hundred and twenty (120) days or more. In the event of any such delay, County and **ENTITY** will establish a revised Project Schedule. The County may, in response to an actual or anticipated delay in the Project, reallocate available bond funds, suspend payments under this Agreement for some period of time, or terminate this Agreement, as provided in Sections 10.e, 15.b.iii, and 14 below.

5. **Design.**

   a. *Consultants*. If consultants are necessary to design any portion of the Project, **ENTITY** will prepare the contracts for design and employ the consultants. **ENTITY** has the usual rights of the owner of a public design contract, including the authority to approve changes and make payments, subject to coordination with the County, as described below. **ENTITY** will include timing for solicitation and award of design and consultant contracts in the Project Schedule.

   b. *Design Elements and Features; Cooperation*. The parties will cooperate review the design features and elements of the Project prior to the preparation of final plans and specifications. **ENTITY** must notify the County prior to changing, deleting, or adding to these elements and features. Any changes to the Project that constitute a "substantial modification" as that term is defined in the County Bond Code cannot be made unless and until the County Board of Supervisors amends the bond implementation plan.

6. **Review of Bids. ENTITY** will solicit bids and award construction contracts in compliance with Title 34.

   a. *County Review*. **ENTITY** will provide County the opportunity to review and comment on the solicitations for all construction contracts for the Project, including relevant scopes of work, prior to the issuance of such solicitations by **ENTITY. ENTITY** will include time for such review in the Project Schedule.

   b. *Bids in Excess of Available Funds*. If the lowest responsible bid exceeds the available funds for the Project, the parties will conduct a joint review of the bids immediately following opening and consult upon a course of action. If the ENTITY decides to continue with the Project at the higher cost, or revise the scope of the project to lower the cost, the parties will cooperate to amend the Bond Ordinance and this Agreement as necessary, except that under no circumstances will the County be required to provide additional funding.

7. **Construction. ENTITY** will administer the construction contracts for the Project in accordance with the requirements of Title 34, and in accordance with the Project Schedule. **ENTITY** has the usual rights of the owner of a public construction contract.

a. *Change Orders and Amendments*. **ENTITY** will consult with County on all requests for change orders and contract amendments with an estimated cost of more than Ten Thousand Dollars ($10,000.00), prior to approving or signing them.

b. *Contract Claims*. **ENTITY** will afford County the opportunity to review and comment on all contract claims prior to resolution thereof.

c. *Utility Relocations*. **ENTITY** will coordinate all utility relocations for the Project.

d. *Rights-of-Way and Construction Easements*. **ENTITY** will acquire, either by purchase or through its power of eminent domain, all rights-of-way and construction easements necessary for the Project. **[IF THE PROJECT LIES WITHIN BOTH JURISDICTIONS, THIS LANGUAGE WOULD NEED TO READ**: "**ENTITY** will acquire, either by purchase or through its power of eminent domain (with acquisition costs subject to reimbursement as project costs, as provided below), all rights-of-way and construction easements necessary for that portion of the Project lying in **ENTITY'S** jurisdiction and County will acquire, either by purchase or through its power of eminent domain, all rights-of-way and construction easements necessary for that portion of the Project lying within unincorporated Pima County. Each party will share with the other any records or documents in its possession that will assist the other party in the acquisition of any rights-of-way and construction easements necessary for the Project."**]** County will retain, from the Allocated Maximum Amount, the cost of any acquisitions made by the County pursuant to this Subsection d.

e. *Right of Entry*. Each party grants the other party the right to enter upon real property owned by that party as may be necessary to carry out the purposes of this Agreement.

f. *Project Permits*. **ENTITY** will obtain any approvals, permissions or permits necessary for the Project. Costs of permits will be reimbursed as a project cost.

g. *Public Participation*. **ENTITY** will coordinate all publicity or public participation activities with County and will coordinate all public meetings on the Project in compliance with the Pima County Board of Supervisors Policy 3.5, *Notification to Board of Supervisors of Public Meetings to be Held in their District* and Pima County Administrative Procedure 3.8, *Notification to Board of Supervisors of Public Meetings to be Held in their District*, as those policies may be amended from time to time. (These policies are available on the County's website.)

h. *Right of Way Assets*. Relocation of ENTITY assets within the Right-of-Way such as communication, stormwater, pedestrian and bicycle elements, landscaping, illumination, traffic-related signs and signals will be reimbursed

as an eligible project expense. **[FOR CITY OF TUCSON IGAs, add: Relocation of City water infrastructure will be handled as provided in that certain License dated June 26, 1979, and that certain First Supplement to License Agreements executed by City on March 15, 1982 and by County on March 23, 1982).]**

8. **County and Entity Coordination.**

   a. *Inspection.* County may inspect any portion of the Project, both during and after construction, to determine compliance with drawings and specifications and with the terms of this Agreement. **ENTITY** will allow official County representatives reasonable access to the Project site during construction and at all times thereafter during the 25-year maintenance-and-operation period described in Section 12 below, unless this requirement has been amended in the County Bond Code, in which event ENTITY will comply with the requirement as amended. The Project Manager and County inspectors will cooperate and consult with each other during Project construction.

   b. *Project Manager and Representatives.* **ENTITY** will designate a project manager for the Project (the "Project Manager") and County will designate a representative (the "County Liaison") to be a liaison with the Project Manager during construction of the Project.

   c. *Disputes.* In the event the Project Manager and County Liaison disagree on any material aspect of the Project, they will submit the issue in dispute to the County Administrator or designee and the **ENTITY'S** City/Town Manager or designee for resolution.

9. **Financing of the Project.**

   a. *Allocation of Bond Dollars.* County will reimburse **ENTITY** for Project expenses, including project management and project specific soft costs (which do not include **ENTITY'S** administrative costs), in the manner set forth in this Agreement, up to the Maximum Allocated Amount, and according to the expense allocation in the Bond Ordinance. No project management related costs or soft costs, including administrative overhead will be reimbursed on pavement preservation projects. No County bond funds in excess of the amount set forth in this Agreement and in the Bond Ordinance may be expended for the Project without the prior amendment of the Bond Ordinance and this Agreement by the Board of Supervisors. ***ENTITY** will pay all costs of the Project in excess of the Allocated Maximum Amount* **[OR: in excess of the total of the Allocated Maximum Amount and the non-bond, non-County funds described in the Recitals and in Subsection c below].**

   b. *Operation/Maintenance Costs; Substantial Completion.* County will not reimburse ENTITY for any costs associated with operating or maintaining the Project after substantial completion of the initial construction; **ENTITY** is

responsible for all costs of operation and maintenance, including all utility charges from and after the date of substantial completion. A Project is "substantially complete" for purposes of this Agreement when construction is finished, subject to punch-list items, correction of minor defects, and finishing touches; a certificate of occupancy, if one is required, has been issued; and the Project is fit to be used for its intended purpose, which is determined without regard to any delay by ENTITY in actually opening, occupying or utilizing the Project.

c. *Additional Funding.* Entity will ensure that any additional Project funding from third parties as described in the Recitals is available for use when it is needed. If for any reason the additional funds are not available, **ENTITY** is responsible for completing the Project with the available funds or providing additional funding. **ENTITY** may not alter the scope of the Project without prior approval of the County and amendment of this Agreement and the Bond Ordinance as appropriate.

d. *Utility Relocation and other Third-Party Expenses.* Utility relocation costs are an eligible reimbursement expense, except that **County will not reimburse ENTITY for expenses that are legally the responsibility of a third party (such as the cost of utility relocations that should be borne by the utility). ENTITY must arrange for those costs to be paid by the third party in a timely manner, or ENTITY must itself pay those costs.**

10. **Reporting and Payment Responsibilities.**

a. *Reimbursement Requests*. Within ten (10) days after the end of each month, starting on the date indicated in the Project Schedule, **ENTITY** will submit to County a Reimbursement Request, together with supporting documentation, in accordance with the Project Schedule, for Project expenses paid by **ENTITY** since the last Reimbursement Request. **ENTITY'S** Project Manager is responsible for verifying the accuracy of all invoices submitted by contractors, and will, as part of ENTITY's Reimbursement Requests, certify that **ENTITY** has paid said invoices (less any retention held by **ENTITY**) prior to requesting reimbursement from the County.

b. *Payment of Reimbursement Requests*. County will review each monthly Reimbursement Request and, if County does not approve the request, County will notify **ENTITY** in writing of its disapproval and the reason for it, within ten (10) business days after receipt of the Reimbursement Request. If County approves the Reimbursement Request, County will pay the Reimbursement Request within ten (10) business days after approval (except as set forth below with respect to the final accounting and payment).

c. *Monthly Progress Reports*. Each month, at the same time the **ENTITY** submits its Reimbursement Request, it will also submit a progress report (the "Progress Report") in the format shown on Exhibit B attached hereto or another format

supplied by County. The Progress Report will include any suggested revisions to the Project Schedule. **ENTITY** will submit a Progress Report for each month of the Project even if **ENTITY** is not seeking reimbursement for the preceding month.

d. *Submittal of Reports*. **ENTITY** will submit all Reimbursement Requests and Progress Reports to:

Pima County Project Management Office
201 N. Stone, 2nd Floor
Tucson, Arizona 85701

e. *Final Report & Accounting*. Within ninety (90) days after substantial completion of the Project, **ENTITY** will submit to County: (1) a final report, in the form attached as Exhibit C, describing the Project as constructed and summarizing its history (i.e., who designed, constructed, provided public art, funding sources, description of public participation, purpose and public benefit of the Project, etc.), along with photographs and final as-built drawings; (2) a detailed final accounting statement of the funds expended on the Project, along with a final Reimbursement Request if needed. If County does not disapprove the final Reimbursement Request, it will pay the request within forty-five (45) days of receipt. If ENTITY does not submit final accounting and invoices within ninety (90) days after substantial completion, County may elect to delay or deny reimbursement.

11. **Ownership of Improvements**. Unless explicitly stated otherwise in this Agreement, ownership and title to all materials, equipment and appurtenances installed pursuant to this Agreement will automatically vest in **ENTITY**. **ENTITY** will not dispose of or encumber its title or other interest in the Project improvements for a period of twenty-five (25) years following the date the Project is substantially complete, unless this requirement has been amended in the County Bond Code, in which event ENTITY will comply with the requirement as amended. This Section 11 survives termination, cancellation, expiration or revocation, whether in whole or in part, of this Agreement.

12. **Post-Construction Operation and Maintenance**.

a. *Operation and Maintenance*. For at least twenty-five years following substantial completion of the Project, **ENTITY** will: (1) operate the Project for the purposes set forth in the description of the Project in the Bond Ordinance for the benefit of the public, including providing appropriate staffing levels and paying all costs and expenses associated with operation; (2) insure the Project (through either direct or self-insurance coverage); (3) maintain, repair and if necessary replace the Project or Project components as needed to allow the project to function as originally intended and in good working order; (4) make the Project available to all residents of Pima County without restriction or preference as to jurisdiction of residence; and (4) not charge a fee for use of the Project that is more than a fee charged by County for a similar purpose, unless this

requirement has been amended in the County Bond Code, in which event ENTITY will comply with the requirement as amended.

b. *Survival of Obligation.* This Section 12 survives termination, cancellation, expiration or revocation, whether in whole or in part, of this Agreement.

c. *Inspection and Remedies.*

i. County representatives may inspect the Project at any reasonable time during the 25-year maintenance-and-operation period to assess compliance with the obligations of this Section 12. **ENTITY** representatives will accompany County representatives during any such inspection.

ii. If County determines that **ENTITY** has not complied with its maintenance and repair obligations, County will notify **ENTITY** in writing. If **ENTITY** has not cured the noncompliance within 120 days after such notice, County may (1) pursue any legal remedy available to it, including obtaining injunctive or monetary relief from a court; (2) perform any necessary repairs, in which case **ENTITY** will promptly reimburse the County for any costs incurred, and/or (3) suspend funding of other bond projects in **ENTITY's** jurisdiction.

d. *Private Use; Annual Report.* **ENTITY** acknowledges that the funds provided by the County under this Agreement are the proceeds of the sale of tax-exempt bonds. ENTITY will, on an annual basis after substantial completion of the Project, provide County with a report that describes and quantifies (1) any use of any portion of the Project that meets the definition of "private business use" in 26 U.S.C. § 141(b)(6) and (2) any payments made in connection with that private business use, whether made to **ENTITY** or to another person. **ENTITY** will respond promptly and fully to County if any County representative requests clarification or additional information regarding these matters. **ENTITY** will immediately modify its use of the property or take any corrective actions that County deems necessary to prevent the County's bonds from meeting the definition of "private activity bond" in 26 U.S.C. § 141(a).

e. *County Contribution.* **ENTITY** will acknowledge County's contribution to the Project in a manner approved by County, including by doing the following.

i. **ENTITY** will display a sign during construction stating that the Project is a County bond-funded project and listing the names of the members of the Board of Supervisors. The sign will be made and installed by **ENTITY**, using a design provided by County, in a location at the construction site that is visible to the public but does not interfere with the construction.

ii. **ENTITY** will also recognize the County's contribution at any opening ceremonies for the Project, and in press releases about the Project; will invite County to participate in any such ceremonies; and will install some

form of permanent plaque or sign at the Project memorializing the County's contribution.

13. **Amendment of the Bond Ordinance. ENTITY** will notify County of any events that would require an amendment of the Bond Ordinance, and will formally request that the County Board of Supervisors hold a public hearing on the requested amendment. The parties will follow the procedures for amendment of the Bond Ordinance set forth in Chapter 3.06 of the Pima County Code, as it may be amended or renumbered from time to time, and Section____ of the Bond Ordinance. In the event the Board of Supervisors does not approve **ENTITY'S** request for a Bond Ordinance amendment, **ENTITY** will complete the Project as defined by the Bond Ordinance and this Agreement.

14. **Federal Treasury Regulations. ENTITY** acknowledges that Pima County manages the expenditures of bond proceeds in order to qualify for a spending exception to the arbitrage rebate requirements of Sections 148 through 150 of the Internal Revenue Code of 1986 and the related regulations found in 26 CFR Part 1, §§1.148 through 1.150 as may be modified from time to time (such statutes and regulations hereinafter referred to as the "Tax Exempt Bond Rules"). **ENTITY** acknowledges that arbitrage rebate is affected by both the use of bond proceeds and by the timing of bond related expenditures. Notwithstanding any other provision of this Agreement, County may, in County's sole discretion, either (i) reallocate Project funds to other projects funded with County bonds, or (ii) terminate this Agreement as set forth in Subsection 15.b.iii below, if, in County's sole determination, such reallocation or termination is necessary or advantageous to the County under the Tax Exempt Bond Rules either (a) to qualify for a spending exception to the arbitrage rebate requirements, or (b) to reduce the amount of any potential arbitrage rebate or penalty, or (c) to manage the County's bond proceeds.

15. **Term and Termination.**

    a. *Term*. The term of this Agreement begins on the date the Chair of the Pima County Board of Supervisors executes it, and, unless earlier terminated or extended, ends on the date that is twenty-five (25) years after completion and acceptance of the Project.

    b. *Termination*. The parties may terminate this Agreement under the following circumstances:

        i. <u>For Cause</u>. A party may terminate this Agreement for material breach of the Agreement by the other party. Prior to any termination under this Subsection i, the party allegedly in default will be given written notice by the other party of the nature of the alleged default. The party in default has forty-five (45) days thereafter to cure the default. If the default is not cured within that time, the other party may terminate this Agreement, unless the nature of the default is such that more than forty-five (45) days are necessary to cure the default and the defaulting party has commenced and is diligently pursuing

the cure within that period. Any such termination will not relieve either party from liabilities or costs already incurred under this Agreement.

ii. Conflict of Interest. This Agreement may be terminated for conflict of interest as set forth in A.R.S. § 38-511, the relevant portions of which are hereby incorporated by reference.

iii. Arbitrage Rebate Requirements. The County reserves the right to cease payments to **ENTITY** and unilaterally terminate this Agreement if County determines, in County's sole discretion, that any action or inaction on the part of **ENTITY** is likely to occur that would adversely affect the election made by the County under the Tax Exempt Bond Rules relating to exceptions for arbitrage rebate.

c. *Legal Authority*. Neither party warrants to the other its legal authority to enter into this Agreement. If a court, at the request of a third person, should declare that either party lacks authority to enter into this Agreement, or any part of it, then the Agreement, or parts of it affected by such order, will be null and void, and no recovery may be had by either party against the other for lack of performance or otherwise.

d. *Ownership of Project upon Termination*. Any termination of this Agreement will not relieve any party from liabilities or costs already incurred under this Agreement, nor affect any ownership of the Project constructed pursuant to this Agreement.

16. **Indemnification.** To the fullest extent permitted by law, each party to this Agreement will 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.

a. *Preexisting conditions*. To the fullest extent permitted by law, **ENTITY** will indemnify, defend and hold County, its boards, officers, departments, employees and agents, harmless from and against any claims and damages, as fully set out above, resulting from or arising out of the existence of any substance, material or waste, regulated pursuant to federal, state or local environmental laws, regulations or ordinances, that is present on, in or below or originated from property owned or controlled by **ENTITY** prior to the execution of this Agreement.

b. *Notice*. Each party will 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 Section 16. Each party will keep the other party informed on a current basis of its defense of any claims, demands, suits, or judgments under this Section 16.

c. *Negligence of indemnified party*. The obligations under this Article do not extend to the negligence of the indemnified party, its agents or employees.

d. *Survival of termination.* This Article survives the termination, cancellation, expiration or revocation, whether in whole or in part, of this Agreement.

17. **Insurance.** When requested, a party will provide the other party with proof of its worker's compensation, automobile, accident, property damage, and liability coverage or program of self-insurance.

18. **Book and Records. ENTITY** will keep and maintain proper and complete books, records and accounts of the Project. For bond purposes, the Project books and records must continue to be maintained for a period of nineteen (19) years after execution of this Agreement. **ENTITY** has the option of maintaining either, (i) the Project books and records for the requisite number of years, or (ii) conveying the Project books and records to County at any time after the Project is completed. The books, records and accounts of the Project will be available for inspection and audit by duly authorized representatives of County at all reasonable times during the period in which said books, records and accounts are maintained by **ENTITY**. Unless **ENTITY** conveys all Project books and records to County, **ENTITY** will indemnify and hold County harmless from and against any amount required to be paid to the Internal Revenue Service or any governmental entity or agency arising out of the failure by **ENTITY** to maintain such records.

19. **Inspection and Audit.** County may perform an inspection of the Project or an audit of **ENTITY'S** books and records at any time in order to verify that monies spent on the Project were done so in accordance with this Agreement.

20. **Construction of Agreement.**

a. *Entire Agreement*. This Agreement 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.

b. *Amendment.* This Agreement may not be modified, amended, altered or changed except by written agreement signed by the parties.

c. *Construction and interpretation*. All provisions of this Agreement will 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 will 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 will meet promptly and attempt to agree on a substitute provision.

21. **Legal Jurisdiction.** Nothing in this Agreement either limits or extends the legal jurisdiction of County or **ENTITY**.

22. **No Joint Venture**. Nothing contained in this Agreement creates any partnership, joint venture or employment relationship between the parties or creates any employer-employee relationship between County and any **ENTITY** employees, or between **ENTITY** and any County employees. No party is 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.

23. **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 affect 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.

24. **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.

    a. *Anti-Discrimination*. **ENTITY** will comply with all provisions and requirements of Arizona Executive Order 2009-09, which supersedes Executive Order 99-4 and amends Executive Order 75-5, as it may be subsequently amended or replaced from time to time. During the performance of this Agreement, **ENTITY** will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

    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. *Compliance with Bond Requirements.* **ENTITY** will 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. Any reports to be submitted by **ENTITY** to County in compliance with Pima County Code Chapter 3.06 or the Bond Ordinance will be provided in a format and schedule determined by County.

25. **Immigration Laws. ENTITY** hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to **ENTITY'S** employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). **ENTITY** will further ensure that each contractor and subcontractor who performs any work for **ENTITY** under this Agreement likewise complies with the State and Federal Immigration Laws.

26. **Waiver.** Waiver by any party of any breach of any term, covenant or condition herein contained is not 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.

27. **Force Majeure.** A party is not 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.

28. **Notification.** All notices or demands upon any party to this agreement must be in writing, unless other forms are designated elsewhere, and be delivered in person or sent by first class mail addressed as follows:

If to County:

If to ENTITY:

29. **Remedies.** Any 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 is cumulative and in addition to any other right or remedy existing at law or in equity or by virtue of this Agreement.

In Witness Whereof, 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, and **ENTITY** has caused this Agreement to be executed by the Mayor upon resolution of the Mayor and Council and attested to by its Clerk.

ATTEST:

ENTITY:

_____
ENTITY Clerk

_____

ATTEST:

PIMA COUNTY:

_____
Robin Brigode
Clerk of the Board

_____
Chair
Board of Supervisors

APPROVED AS TO CONTENT:

_____
[Name & Title]

_____
[Name & Title]

APPROVED AS TO FINANCE PROVISIONS:

_____
Tom Burke, Finance Director

Intergovernmental Agreement Determination

The foregoing Intergovernmental Agreement between Pima County, and the **ENTITY** has been reviewed pursuant to A.R.S. § 11-952 by the undersigned, each of whom 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 the party represented by the undersigned.

Pima County:

_____

Deputy County Attorney Date

ENTITY:

_____

ENTITY Attorney Date

ATTACHMENT 3

Bond Advisory Committee member comments on the Truth in Bonding Code updates and sample IGA, and Staff Responses

Will not be jurisdictionally balanced bond program if some propositions are approved and others fail....don't know where this needs to be and most probably not the code.

Response:
3.06.070 A.9. concerning bond ordinance amendments, includes updated language to make it clearer that a bond ordinance amendment will be required if one or more propositions fail, specifically if projects that would have been funded impact any of the projects that will be funded by the propositions that were approved.

3.06.090 A. was updated to add the following: Neither this code, not the inclusion of a project in the bond implementation plan gives an agency [defined as another jurisdiction, political subdivision or non-profit organization] any contractual rights with respect to a project until a binding agreement is duly approve and executed.

Each of the ballot propositions contains projects that are beneficial to the region as a whole, as well as projects with benefits to a specific area or jurisdiction.

To avoid lengthy delays for Neighborhood Reinvestment projects the IGA needs to be executed within one year starting when the Board approves the project. If it is not, the funds should revert back into the pot and they start all over.

Response:
3.06.090 A. was updated to set the expectation that a liaison from each agency would be identified to facilitate the development of necessary agreements and other aspects of project implementation. Additional requirements specific to the Neighborhood Reinvestment program are more suitable to address in the bond implementation plan ordinance.

IGA 7d. includes requirements concerning right of way acquisitions. But some projects will not include right of way acquisition. For instance, we've received assurances from the City regarding the 12th Avenue Cultural and Culinary Corridor project that they own all of rights of way necessary to complete the project and that no funds will be used to procure right of way. Therefore, this provision should not be applicable to that project. I would be careful using that as boilerplate.

Response: Not all the items included in the sample IGA will apply to every project.

Backing out of joint projects prior to the execution of the IGA and after. Strong language to insure total reimbursement. I do not think that this can be emphasized enough in many places. Code, and IGA and voter discloser package.

Response: The code and sample IGA do not specifically address joint projects (meaning projects implemented and/or funded by the County and another agency). The only project that may meet this definition is the Southern Arizona Regional Orientation Center, which will be managed by Pima County, but will rely upon land and other commitments from the City of Tucson, as well as other commitments from non-governmental organizations. Because it is project specific, language will be included in the

bond implementation plan ordinance requiring that formal agreements be executed by all parties prior to initiating the bond project.

If a project never ever comes to fruition, the bonds should not be sold. I do not want the funds diverted to something else in a few years.

Response: This will be stated up front in the bond implementation plan ordinance.

Can bond funded property or facilities be sold?

Response:

For facilities owned and operated by an agency other than the county (city, town, YMCA, etc.) paragraph 11 of the IGA states that the entity will not dispose of or encumber the title or other interest in the project improvements for a period of 25 years following project completion. There is no similar requirement for Pima County. However, if the County did sell a bond funded property or facility before that series of bonds were repaid, we should be required to reinvest the proceeds for a purpose consistent with the purpose stated in the ballot proposition question. Specifically for open space, while there is no restriction in the County code from reselling open space, there was a restriction in the 2004 bond ordinance that we will likely carry over to the 2015 ordinance, stating that if the county received a Section 10 permit from U.S. Fish and Wildlife under the Endangered Species Act, properties acquired to meet the permit requirements (which is almost all the open space we buy) will be conserved in perpetuity and managed consistent with the Sonoran Desert Conservation Plan. We're anticipating receiving the permit this calendar year. The County could sell that permanently protected open space to a 3rd party, but that 3rd party would be unable to develop it and would have to manage it for conservation, which would still meet the intent of the initial open space bond project.