



Contract Number: 01-73-T-139256-0307  
Effective Date: 3-6-07  
Term Date: 3-5-32  
Cost: \$2,500,000.-  
Revenue: -  
Total: \$2,500,000.- NTE:  
Action:  
Renewal By: 12-1-31  
Term: 3-5-32  
Reviewed by: [Signature]

**BOARD OF SUPERVISORS AGENDA ITEM SUMMARY**

*Requested Board Meeting Date: March 6, 2007*

***ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:***

For Board of Supervisors Approval:

Intergovernmental Agreement between Pima County and the City of Tucson for the Rehabilitation, Restoration and Management of the "Adkins Steel" Parcel at Historic Fort Lowell.

The City of Tucson recently purchased approximately five acres of real property situated at the Southwest Intersection of East Fort Lowell and North Craycroft Roads (the "Fort Lowell Parcel"), also known as the "Adkins Steel Parcel". The Fort Lowell Parcel is a parcel of historical, cultural and archeological interest to the City and County since it contains the site and remnants of the officers' quarters at historic Fort Lowell, and the prehistoric Hohokam "Hardy Site". The City obtained the Fort Lowell parcel as part of an Exchange Agreement with Oasis Tucson, Inc. ("Oasis") pursuant to which the City exchanged a parcel of City-owned land located at the Northeast intersection of E. Speedway Blvd. and Bonanza Lane ("the East Speedway Parcel") for the Fort Lowell Parcel. The IGA allows for reimbursing certain costs associated with the City acquisition of the Adkins Steel parcel, and City will convey to Pima County certain riparian parcels, aggregating approximately 12 acres\*, located within the boundaries of the East Speedway Parcel (the "Riparian Parcels"). [\*exact acreage has not yet been determined by survey.] The Fort Lowell Parcel was originally identified for County purchase in the 2004 Bond Election, Question 4.4. A sum of \$3 million was allocated for the purchase, stabilization and rehabilitation of the Fort Lowell Parcel and stabilization of the nearby historic San Pedro Chapel. \$500,000 of the Bond Monies has been segregated by Pima County Cultural Resources for the San Pedro Chapel project, leaving \$2.5 million for the Fort Lowell Parcel. These Bond Monies will be utilized for the planning, stabilization, and restoration, and rehabilitation of the historic Fort Lowell Parcel. Within 90 days of the recordation of the subject IGA, City will grant to County a Preservation Easement in perpetuity over and upon the Fort Lowell Parcel.

**STAFF RECOMMENDATION(S):** Staff recommends execution of the Agreement committing expenditure of \$400,000.00 of 2004 Bond funds to reimburse City for the archeological fieldwork at the East Speedway Parcel, and disposal efforts at the Fort Lowell Parcel, and \$2.1 to rehabilitate and restore the Fort Lowell Parcel.

Page 1 of 2

Procure Dept 02/15/07 PM 11:36

To: ROB - 2-21-07  
Agenda - 3-6-07

**PIMA COUNTY COST: Two million five-hundred thousand dollars (\$2,500,000)**

**REVENUE TO PIMA COUNTY: \$ None**

**FUNDING SOURCE(S): 2004 Bond Fund**

*(i.e. General Fund, State Grant Fund, Federal Fund, Stadium D. Fund, etc.)*

**Advertised Public Hearing:**

**YES**       **NO**

**Board of Supervisors District:**

1     2     3     4     5     All

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***IMPACT:***

***IF APPROVED:*** Pima County Regional Flood Control District will obtain fee title to the Riparian Parcels at the East Speedway Parcel and Pima County will obtain a Preservation Easement on the Fort Lowell Parcel, an important historical, cultural and archeological site for the benefit, education and enjoyment of the citizens of Pima County.

***IF DENIED:*** Pima County Regional Flood Control District will not obtain title to the Riparian Parcels and County will not obtain a Preservation Easement in perpetuity upon the historically, culturally and archeologically significant Fort Lowell Parcel for purposes of future preservation as provided for in the 2004 Bond election.

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**DEPARTMENT NAME:**  **Real Property Services**

**CONTACT PERSON:** **Michael D. Stofko**

**TELEPHONE NO.:** **740-6667**

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**Intergovernmental Agreement Between Pima County and the  
City of Tucson For the Rehabilitation, Restoration and Management of  
the "Adkins Steel" Parcel at Historic Fort Lowell**

CONTRACT	
NO.	<u>01-73-7-139256-0307</u>
AMENDMENT NO.	_____
This number must appear on all invoices, correspondence and documents pertaining to this contract	

Exhibit A to Resolution No. 20574  
City of Tucson Contract No. 0278-07

## **Intergovernmental Agreement Between Pima County and the City of Tucson For the Rehabilitation, Restoration and Management of the “Adkins Steel” Parcel at Historic Fort Lowell**

This Agreement is entered into by and between Pima County, a body politic and corporate of the State of Arizona (“County”) and the City of Tucson, a municipal corporation of the State of Arizona (“City”) (collectively, the “Parties”) pursuant to Arizona Revised Statutes (“ARS”) Section 11-952.

### **RECITALS:**

- A. County and City are empowered to enter into this Agreement pursuant to ARS Sections 11-951 through and including 11-954.
- B. City recently purchased that certain parcel of real property comprised of approximately 5 acres and situated generally at the Southwest intersection of East Fort Lowell and North Craycroft Roads (Pima County Tax Parcel Nos. 110-09-0330, 110-09-032A, 110-09-032B, 110-09-0340, and 110-09-0350) (the “Fort Lowell Parcel”), and legally described and depicted on attached Exhibits “A” and “B”, respectively. The Fort Lowell Parcel, also known as the “Adkins-Steel Parcel”, having been owned for a lengthy period of time by the Adkins family, is a parcel of historical, cultural and archeological interest to the City and County for the reason that it contains the site and remnants of the officers’ quarters at historic Fort Lowell, and the prehistoric Hohokam “Hardy Site”, AZ BB:9:14 (ASM).
- C. City formerly owned that certain parcel of real property consisting of approximately 31.68 acres, situated generally at the Northeast intersection of East Speedway Boulevard and Bonanza Lane and which borders the Tanque Verde Wash (the “East Speedway Parcel”; also known as the “Tanque Verde Wash Site”). The East Speedway Parcel/ Tanque Verde Wash Site itself is of historical, archeological and cultural interest in that it contains the remnants of an ancient Hohokam village site and burial grounds. A portion of the East Speedway Parcel lies within the 100 year floodplain of the Tanque Verde Wash, within the erosion hazard setback; another portion is a tributary wash running generally along the East boundary of said parcel (collectively, the “Riparian Parcels”). The Riparian Parcels will be located within the East Speedway Parcel, which is depicted on the attached Exhibit “C.”

- D. Pursuant to an Offer to Exchange with Oasis Tucson, Inc. (“Oasis”), formally adopted by the City pursuant to City of Tucson Resolution No. 20214, on November 1, 2005, (the “Exchange Agreement”) City has conveyed title to the East Speedway Parcel to Oasis in exchange for a conveyance of title by Oasis of the Fort Lowell Parcel to City.
- E. Oasis purchased the East Speedway Parcel from City for the purpose of developing the site for residential uses. Arizona law requires the completion of all archeological data recovery fieldwork (“the Fieldwork”) before any development-related or ground disturbing activities may commence on the site. The cost of the Fieldwork on the East Speedway Parcel is estimated to be approximately \$500,000.
- F. In order to facilitate City’s implementation of the Exchange Agreement, County has agreed to contribute Bond Monies [defined hereafter], in the amount of \$400,000, (the “Maximum Reimbursement Amount”) to reimburse City for completion of the Fieldwork and other miscellaneous approved expenses on the East Speedway Parcel, and for City’s environmental assessment, remediation and refuse clean-up and disposal efforts at the Fort Lowell Parcel. Payment of the Maximum Reimbursement Amount will occur within sixty (60) days of the recordation of the Conservation Easement referenced in paragraph G, below.
- G. Contemporaneously with the submission of a subdivision plat for the East Speedway Parcel, Oasis will dedicate, donate and convey title to the Riparian Parcels to City. City will in turn dedicate, donate and convey title to the Riparian Parcels to the Pima County Regional Flood Control District to further the District’s flood control and riparian conservation goals, subject to a Conservation Easement in favor of City and a right of reversion to City upon transfer of title to any entity other than County.
- H. Pima County Ordinance No. 2004-18, as subsequently amended by Ordinance No. 2005-92 (the “Bond Ordinance”) lists the purchase, stabilization and rehabilitation of the Fort Lowell Parcel and the stabilization of the nearby historic San Pedro Chapel as an approved 2004 Bond funded project. 2004 Bond Project 4.4, Fort Lowell Acquisition and San Pedro Chapel. The Bond Ordinance allocates an aggregate of \$3 million for the aforementioned purposes (the “Bond Monies”).
- I. City and County mutually desire to improve and enhance the larger historic Fort Lowell Park area. City’s acquisition of the Fort Lowell Parcel will allow some of that portion of the Bond Monies that County would otherwise have spent to purchase the Fort Lowell Parcel to be used, instead, for its historical rehabilitation, stabilization and restoration and for the partial funding of the Fieldwork at the Tanque Verde Wash Site, as described below.

- J. City and County recognize that certain emergency stabilization measures will be necessary on the historic structures on the Fort Lowell Parcel and the Parties hereby agree that County shall have access to same for assessment and planning and the right to commence such stabilization measures immediately upon execution of this Agreement.
- K. City and County desire to consult with other interested parties and mutually cooperate to develop a consensus plan for the restoration, preservation, rehabilitation, interpretation and management of the Fort Lowell Parcel as a long-term public asset (the "Restoration Plan") and the integration of said asset into an overall master plan for Old Fort Lowell Park (the "Master Plan").
- L. City and County also recognize that City has completed the archeological Fieldwork and been conducting environmental assessment and refuse clean-up and disposal on the Fort Lowell Parcel in advance of the Committee's Restoration Plan.
- M. City and County agree to consult with each other regarding the scheduling, scope of work, and payment arrangements for any stabilization, historic preservation efforts, investigation, clean-up, remediation, or disposal efforts that may be needed at the Fort Lowell Parcel before development of the Restoration Plan.
- N. Within ninety (90) days following recordation of this Agreement, City will grant County a Preservation Easement in perpetuity over and upon the Fort Lowell Parcel in a form to be negotiated and agreed to by and between the Parties.

### **Agreement**

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

1. **Purpose.** The purpose of this Agreement is to set forth the responsibilities of the Parties for the restoration, preservation, development, interpretation and management of the Fort Lowell Parcel.
2. **Project.** The Project consists of the mutual planning and execution by the Parties for the restoration, preservation, development, interpretation and long-term management of the Fort Lowell Parcel.
3. **The Fort Lowell Restoration Advisory Committee.**
  - 3.1. City and County shall form a joint committee to assist in the development of plans for the rehabilitation, preservation, interpretation, management and administration of the Fort Lowell Parcel called the Fort Lowell Restoration Advisory Committee (the "Committee"). The City Manager and the County Administrator will each appoint three members of the Committee. Following the selection of their

respective appointments, the City Manager and the County Administrator will jointly select the chair of the Committee. The Committee will be considered to have been formed upon the date of the selection of the Committee Chair.

- 3.2. City and County shall create and devise a Master Plan to integrate the several Fort Lowell Parcels that are publicly owned into a comprehensive preservation and interpretive facility (the "City Park"). The Master Plan will include but not be limited to the following elements:
  - a) background report of resources, existing conditions, and current operations;
  - b) preparation of alternative concept plans and costs;
  - c) feasibility plan for preferred alternative that integrates the Fort Lowell Parcel into the City Park;
  - d) facility budget for preferred alternative and business/management plan.
- 3.3. Upon acceptance of the Master Plan, the Parties, with the assistance of the Advisory Committee, shall prepare a Restoration Plan to preserve, rehabilitate, restore, interpret, manage and administer the Fort Lowell Parcel. The Restoration Plan will include but not be limited to the following elements:
  - a) a treatment plan for the rehabilitation and preservation of the historic properties and their proposed uses;
  - b) a proposed budget for the Fort Lowell Parcel, including grants, City and County monies, Pima County Bond funds, and other monies.
  - c) a schedule for completion of the preservation, rehabilitation, adaptive use and interpretation activities at the site.
  - d) recommendations regarding the interpretation and long-term management of the historic and other cultural resources of the Fort Lowell Parcel.
  - e) recommendations for the continued oversight, administration and maintenance of the Fort Lowell Parcel.
- 3.4. The Advisory Committee will consult with the Old Fort Lowell Neighborhood Association, the County Administrator, the City Manager, and the public in development of the Master Plan and Restoration Plan.
- 3.5. The Advisory Committee will submit the Restoration Plan to the City Council and the Board of Supervisors for approval, by resolution, within twelve (12) months after the formation of the Committee.
- 3.6. If neither governing body approves the Restoration Plan within eighteen (18) months after the formation of the Committee, the City Manager and the County Administrator shall meet and confer to develop a revised Restoration Plan.

- 3.7 The revised Restoration Plan will be submitted to the respective governing bodies within twenty (20) months of the formation of the Advisory Committee. If the revised Restoration Plan is not approved within twenty four (24) months of the formation of the Advisory Committee, and unless extended by mutual agreement of the Parties, this Intergovernmental Agreement shall be of no further force and effect.
- 3.8 Should neither the Restoration Plan nor the revised Restoration Plan for the Fort Lowell Parcel be approved by the respective governing bodies, the City will reimburse Pima County for any bond funds expended to complete the Fieldwork for the East Speedway Parcel, and for Bond Monies expended, if any, to complete the environmental remediation and refuse clean-up of the Fort Lowell Parcel. This reimbursement shall be paid to Pima County within twenty four (24) months of the formation of the Advisory Committee. This Section shall survive termination, cancellation, expiration or revocation, whether in whole or in part, of this Agreement.
4. **Design and Construction Responsibilities.** County shall implement the Project in accordance with the terms of the Restoration Plan, as described below.
- a. *Standards.* County shall design and construct the Project in compliance with all applicable building standards and codes, in compliance with Title 34 of the ARS, and in a good and workmanlike manner.
- b. *Environmental Compliance.* County shall prepare and incorporate into the planning, design, and construction of the Project, responses to all applicable local, state and federal environmental requirements, including but not limited to hydrologic and geotechnical investigations, compliance with 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 (such as the cactus ferruginous pygmy-owl), and compliance with the National Pollution Discharge Elimination System (including preparation of a Storm Water Pollution Prevention Plan).
- c. *Cultural Resources.* County shall consider potential impacts to cultural and historical resources in the Project planning and design phases through inventory, evaluation and impact assessment, and seek to avoid impacts to these resources in accordance with applicable local, state, and federal historic preservation laws and regulations, including but not limited to the Arizona Antiquities Act. If impacts are unavoidable, a mitigation treatment plan will be prepared in consultation with City, the SHPO, and other agencies as appropriate, and implemented prior to construction.
5. **Design.**
- a. *Consultants.* If consultants are employed to perform any portion of the Project, County shall prepare the contracts and choose the consultants. County shall have



- a. *Restoration Schedule.* County shall be responsible for preparing a Restoration schedule (the "Restoration Schedule") showing the anticipated timing and duration of each stage of Restoration. A preliminary Restoration Schedule shall be provided by County to City within thirty days after approval of the Restoration Plan. A final Restoration Schedule shall be established and provided to City within thirty days after award of the Restoration contract(s) by County.
  - b. *Change Orders and Amendments.* County shall consult with City on all requests for change orders and contract amendments with an estimated cost of more than \$25,000, prior to approving or signing same.
  - c. *Signage.* County shall have the right to install temporary and permanent signage at the Ft. Lowell Parcel site in a location of its choosing, announcing that the Project is a cooperative effort of City and County, a County bond-funded project, and listing the names of the members of the Board of Supervisors, the City Council and the Advisory Committee.
8. **Utility Relocations.** City and County shall cooperatively coordinate all utility relocations for the Project.
9. **Rights of Way and Construction Easements.** City shall acquire, either by purchase or through its power of eminent domain, all rights of way and construction easements necessary for the Project.
10. **Right of Entry.** Execution of this Agreement by the parties grants County the right to enter upon the Ft. Lowell Parcel owned by City for all purposes related to County's rights and responsibilities for the Project as set forth herein. City shall arrange for and obtain legal right of entry for County once title to the Ft. Lowell Parcel is conveyed to City.
11. **Project Permits.** County shall obtain any approval, permission or permits necessary for the Project. Each party shall cooperate with the other to obtain all permits necessary for completion of the Project and shall waive all fees associated with said permits.
12. **Public Participation.** County and City shall cooperatively manage the public participation processes for the Project. The County shall coordinate all publicity or public participation activities with City and shall 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, *Implementation of Pima County Policy 3.5*.
13. **County Contribution.** City shall acknowledge the County's contribution to the Project at any public participation event, in a form developed in cooperation with the

County. Examples of acceptable forms of recognition include, but are not limited to, signs, permanent plaques, opening ceremonies and press releases.

14. **Project Manager and Representatives.** County shall furnish a Project Manager for the Project and City shall designate a representative (the "City Liaison") to be a liaison with the Project Manager during the term of the Project.
15. **Disputes.** In the event the Project Manager and City Liaison disagree on any aspect of the Project, the issue in dispute shall be submitted to the County Administrator and the City Manager for resolution.
16. **Financing of the Project.** No Bond Monies in excess of the amount set forth above as Available Funds may be expended for the Project without the prior amendment of the Bond Ordinance and this Agreement by the Board of Supervisors. City may agree to pay all costs of the Project in excess of the Available Funds and the non-bond, non-county funds, if any, in order to obviate the need for the above-referenced amendments.
17. **Regulation of the Project during Construction.** County shall have responsibility for and control over the Project during the term of the Restoration Plan.
18. **Inspection.** City may inspect any portion of the Project construction for substantial compliance with drawings and specifications. County shall allow official City representatives reasonable access to the Project site during Fieldwork. The Project Manager and City inspectors will cooperate and consult with each other during the term of the Project.
19. **Ownership of Improvements.** Ownership and title to all materials, equipment and appurtenances installed pursuant to this Agreement shall automatically vest in City. City hereby agrees not to 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 completed. This Section shall survive termination, cancellation, expiration or revocation, whether in whole or in part, of this Agreement.
20. **Operation.** For at least twenty-five years following completion of the Project, City shall: (1) operate and maintain the Project improvements for the purposes set forth in the description of the Project in the Bond Ordinance for the benefit of the public; (2) insure the Project improvements (through either direct or self-insurance coverage); (3) maintain, repair and if necessary replace the Project improvements; (4) make the Project improvements available to all the residents of Pima County without restriction or preference to jurisdiction of residence; and (5) not charge a fee for use of the Project improvements that is more than a fee charged by the County for a similar purpose. This Section shall survive termination, cancellation, expiration or revocation, whether in whole or in part, of this Agreement.
21. **Amendment of the Bond Ordinance.** The County shall notify the City of any events that would require an amendment of the Bond Ordinance, and shall formally request the County Board of Supervisors that they hold a public hearing on the

requested amendment. The Parties shall 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 IV (B) of the Bond. In the event the Board of Supervisors does not approve the County's request for a Bond Ordinance amendment, the County shall complete the Project as defined by the Bond Ordinance and this Agreement.

22. **Federal Treasury Regulations.** City 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"). City 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 Paragraph 23(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.

23. **Term and Termination.**

- a. *Term.* The term of this Agreement shall begin on the date this Agreement is recorded with the Pima County Recorder, and shall end on the date that is twenty-five (25) years after completion and acceptance of the Project. The term of this Agreement may be extended by action of the Parties.
- b. *Termination.* This Agreement may be earlier terminated under the following circumstances:
- i. For Cause. A Party may terminate this Agreement for material breach of the Agreement by the other Party. Prior to any termination under this paragraph, the Party allegedly in default shall be given written notice by the other Party of the nature of the alleged default. The Party said to be in default shall have forty-five (45) days to cure the default. If the default is not cured within that time, the other Party may terminate this Agreement. Any such termination shall not relieve either Party from liabilities or costs already incurred under this Agreement.
  - ii. 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.

- iii. Arbitrage Rebate Requirements. County reserves the right to cease payments to City and unilaterally terminate this Agreement if County determines, in County's sole discretion, that any action or inaction on the part of City 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, shall 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 shall 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.
- 24. Indemnification.** To the fullest extent permitted by law, each Party to this Agreement shall indemnify, defend and hold the other Party, its governing board or body, officers, departments, employees and agents, harmless from and against any and all suits, actions, legal or administrative proceedings, claims, demands, liens, losses, fines or penalties, damages, liability, interest, attorney's, consultant's and accountant's fees or costs and expenses of whatsoever kind and nature, resulting from or arising out of any act or omission of the indemnifying party, its agents, employees or anyone acting under its direction or control, whether intentional, negligent, grossly negligent, or amounting to a breach of contract, in connection with or incident to the performance of this Agreement.
- a. *Preexisting conditions.* To the fullest extent permitted by law, City shall 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 the City prior to the execution of this Agreement.
  - b. *Notice.* Each Party shall notify the other in writing within thirty (30) days of the receipt of any claim, demand, suit or judgment against the receiving party for which the receiving party intends to invoke the provisions of this Section. Each Party shall keep the other party informed on a current basis of its defense of any claims, demands, suits, or judgments under this Section.
  - c. *Negligence of indemnified party.* The obligations under this Article shall not extend to the negligence of the indemnified Party, its agents or employees.

- d. *Survival of termination* This Article shall survive the termination, cancellation, expiration or revocation, whether in whole or in part, of this Agreement.
25. **Insurance.** When requested, a Party shall provide the other Party with proof of its worker's compensation, automobile, accident, property damage, and liability coverage or program of self-insurance.
26. **Book and Records.** County shall 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 three (3) years after final payment of the bonds issued for the Project. The bonds funding the Project are expected to be fully paid by June 30, 2009, but may be subject to refunding. County shall have 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 shall be available for inspection and audit by duly authorized representatives of City at all reasonable times during the period in which said books, records and accounts are maintained by the County. Unless County conveys all Project books and records to City, County shall indemnify and hold the 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 County to maintain such records.
27. **Inspection and Audit.** City may perform an inspection of the Project or an audit of County'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.
28. **Construction of Agreement.**
- a. *Entire Agreement.* This instrument constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein.
- b. *Amendment.* This agreement shall not be modified, amended, altered or changed except by written agreement signed by the Parties.
- c. *Construction and interpretation.* All provisions of this Agreement shall be construed to be consistent with the intention of the Parties as expressed in the recitals hereof. Moreover, the recitals shall not be construed merely as a statement of history and intent, but as material terms of this Agreement that require the Parties to perform any obligations or duties established therein.
- d. *Captions and headings.* The headings used in this Agreement are for convenience only and are not intended to affect the meaning of any provision of this Agreement.

- e. *Severability.* In the event that any provision of this Agreement or the application thereof is declared invalid or void by statute or judicial decision, such action shall have no effect on other provisions and their application which can be given effect without the invalid or void provision or application, and to this extent the provisions of the Agreement are severable. In the event that any provision of this Agreement is declared invalid or void, the Parties agree to meet promptly upon request of the other Party in an attempt to reach an agreement on a substitute provision.
29. **Legal Jurisdiction.** Nothing in this Agreement shall be construed as either limiting or extending the legal jurisdiction of County or City.
30. **No Joint Venture.** It is not intended by this Agreement to, and nothing contained in this Intergovernmental Agreement shall 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.
31. **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 to 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.
32. **Compliance with Laws.** The Parties shall comply with all applicable federal, state and local laws, rules, regulations, standards and executive orders, without limitation to those designated within this Agreement.
- a. *Anti-Discrimination.* The provisions of A.R.S. § 41-1463 and Executive Order 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.
  - 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.* 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. Any reports to be submitted by County to City in compliance with Pima County Code Chapter 3.06 or the Bond Ordinance shall be provided in a format and schedule determined by County.

33. **Waiver.** Waiver by any party of any breach of any term, covenant or condition herein contained shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
34. **Force Majeure.** A Party shall not be in default under this Agreement if it does not fulfill any of its obligations under this Agreement because it is prevented or delayed in doing so by reason of uncontrollable forces. The term "uncontrollable forces" shall mean, for the purpose of this Agreement, any cause beyond the control of the party affected, including but not limited to failure of facilities, breakage or accident to machinery or transmission facilities, weather conditions, flood, earthquake, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, strike, lockout, labor dispute, boycott, material or energy shortage, casualty loss, acts of God, or action or non-action by governmental bodies in approving or failing to act upon applications for approvals or permits which are not due to the negligence or willful action of the parties, order of any government officer or court (excluding orders promulgated by the parties themselves), and declared local, state or national emergency, which, by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligations by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.
35. **Notification.** All notices or demands upon any party to this agreement shall be in writing, unless other forms are designated elsewhere, and shall be delivered in person or sent by mail addressed as follows:

**PIMA COUNTY:**

Clerk, Board of Supervisors  
130 West Congress Street, 5<sup>th</sup> Floor  
Tucson, AZ 85701

*With copies to:*

Pima County Administrator  
130 West Congress Street, 10<sup>th</sup> Floor  
Tucson, AZ 85701  
Attn.: C.H. Huckelberry  
Telecopy: (520)-740-8171

*and:*

Chief Civil Deputy Pima County Attorney  
32 N. Stone Avenue, 21<sup>st</sup> Floor  
Tucson, AZ 85701  
Telecopy: (520)-620-6556

*and:*

Pima County Cultural Resources Manager  
201 N. Stone Avenue, 7<sup>th</sup> Floor  
Tucson, AZ 85701  
Telecopy: (520) 740-6320

**CITY OF TUCSON:**

Robert E. Walkup, Mayor  
City Hall Tower  
255 West Alameda  
P.O. Box 27210  
Tucson, AZ 85726-7210  
Telecopy: (520)-791-5348

*With copies to:*

Mike Hein, City Manager  
City Hall Tower  
255 West Alameda  
P.O. Box 27210  
Tucson, AZ 85726-7210

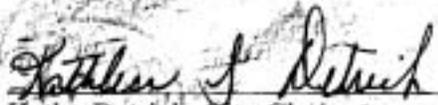
*and:*

Mike Rankin, City Attorney  
City Hall Tower  
255 West Alameda  
P.O. Box 27210  
Tucson, AZ 85726-7210

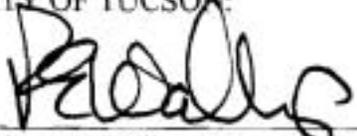
36. **Remedies.** Any Party may pursue any remedies provided by law for the breach of this Agreement. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or in equity or by virtue of this 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 the City has caused this Agreement to be executed by the Mayor upon resolution of the Mayor and Council and attested to by its Clerk.

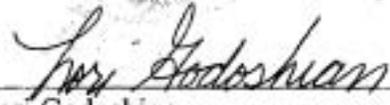
ATTEST:

  
Kathy Detrick, City Clerk January 23, 2007

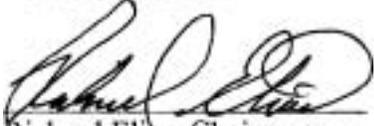
CITY OF TUCSON:

  
Robert E. Walkup, Mayor January 23, 2007

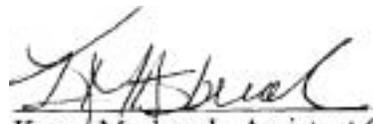
ATTEST:

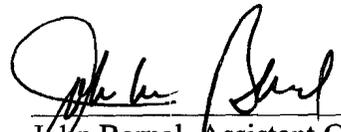
  
Lori Godoshian  
Clerk of the Board

PIMA COUNTY:

  
Richard Elias, Chairman  
Board of Supervisors  
MAR 06 2007

APPROVED AS TO CONTENT:

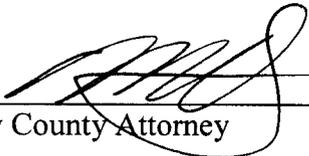
  
Karen Masbruch, Assistant City Manager

  
John Bernal, Assistant County  
Manager

## Intergovernmental Agreement Determination

The foregoing Intergovernmental Agreement between Pima County, and the City of Tucson has been reviewed pursuant to A.R.S. § 11-952 by the undersigned, 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 him/her.

PIMA COUNTY:

  
\_\_\_\_\_  
Deputy County Attorney

2/5/07  
Date

CITY OF TUCSON

  
\_\_\_\_\_  
Assistant City Attorney

January 18, 2007  
Date

Legal Descriptions  
 SWC Ft Lowell Craycroft  
 Agreement dated 04/06/05

Parcel ID	Address	Legal Description
110-09-032A	5460 E FT LOWELL RD, Tucson AZ, 85712	W150' E180' S190' N295' SE4 NE4 EXC E30' .65 AC SEC 35-13-14
110-09-032B	5460 E FT LOWELL RD, Tucson AZ, 85712	W120' OF E300' OF S190' OF N295' OF SE4 OF NE4 S .52 AC SEC 35-13-14 (QCD: 8101/2786)
110-09-0330	5460 E FT LOWELL RD, Tucson AZ, 85712	S190' OF N295' OF W200' OF E500' OF SE4 NE4 EXC N20' OF W158.9' THEREOF .80 AC SEC 35-13-14
110-09-0340	No situs address	S 133' OF N 428' OF E 500' OF SE4 NE4 S 1.53 AC P 94-35-13-14 (QCD: 8101/2786)
110-09-0350	2951 N CRAYCROFT, Tucson AZ, 85712	IRR PAR IN E2 SE4 NE4 WITH 298' FRONTAGE ON CRAYCROFT BLVD 1.70 AC SEC 35-13-14 (D: 5884/1990 DIST: 8730/1953 D: 8973/1426)



# LOCATION MAP



[DJK]\PROJECTS\ADKINS\_051027

5-11-2007



# LOCATION MAP



[DUK]PROJECTSIRP 1883\_051027

2.017.0005

Resolution No. **2007- 36**

**RESOLUTION OF THE PIMA COUNTY BOARD OF SUPERVISORS  
APPROVING THE EXECUTION OF AN INTERGOVERNMENTAL  
AGREEMENT BETWEEN PIMA COUNTY AND THE CITY OF TUCSON  
FOR THE REHABILITATION, RESTORATION, AND MANAGEMENT OF  
THE "ADKINS STEEL" PARCEL AT HISTORIC FORT LOWELL  
(District 4)**

WHEREAS, County and City are empowered to enter into this Agreement pursuant to ARS Sections 11-951 through and including 11-954; and

WHEREAS, City recently acquired the Adkins Steel Fort Lowell Parcel, containing the remaining historic structures of historic Fort Lowell, and comprised of approximately 5 acres situated generally at the Southwest intersection of East Fort Lowell and North Craycroft Roads (Pima County Tax Parcel Nos. 110-09-0330, 110-09-032A, 110-09-0340, and 110-09-0350); and

WHEREAS, Pima County Ordinance No. 2004-18, as subsequently amended by Ordinance No. 2005-92 (the "Bond Ordinance") lists the purchase, stabilization and rehabilitation of the Adkins Steel Fort Lowell Parcel and the stabilization of the nearby historic San Pedro Chapel as an approved 2004 Bond (Project 4.4) funded project; and

WHEREAS, up to \$2.5 million is allocated for the acquisition, stabilization and rehabilitation of the Adkins Steel Fort Lowell Parcel; and

WHEREAS, City and County mutually desire to improve and enhance the larger historic Fort Lowell Park area and desire to consult with other interested parties and mutually cooperate to develop a plan for the restoration, preservation, rehabilitation, interpretation and management of the Adkins Steel Fort Lowell Parcel as a long-term public asset; and

WHEREAS, City and County agree to consult with each other regarding the scheduling, scope of work, and payment arrangements for any stabilization, historic preservation efforts, investigation, clean-up, remediation, or disposal efforts that may be needed at the Fort Lowell Parcel; and

WHEREAS, the Intergovernmental Agreement between Pima County and the City of Tucson for the Rehabilitation, Restoration and Management of the Adkins Steel Parcel at Historic Fort Lowell provides for these mutual goals, and is attached.

**NOW, THEREFORE, BE IT RESOLVED** that:

1. The Intergovernmental Agreement between Pima County and the City of Tucson for the Rehabilitation, Restoration, and Management of the Adkins Steel Parcel at Historic Fort Lowell is approved.
2. Pima County shall provide up to \$2.5 million in bond funding to fulfill the objectives of the 2004 Bond (Project 4.4).
3. Pima County officers and staff are authorized and directed to perform all acts necessary or desirable to give effect to this resolution.

**PASSED, ADOPTED AND APPROVED** by the Pima County Board of Supervisors this 6th day of March, 2007.

PIMA COUNTY BOARD-OF SUPERVISORS:



Chair of the Board

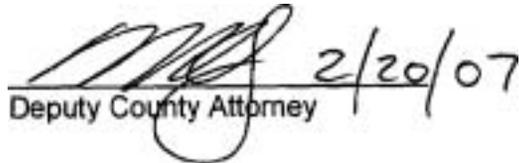
**MAR 06 2007**

ATTEST:



Clerk of the Board

APPROVED AS TO FORM:



Deputy County Attorney