F. ANN RODRIGUEZ, RECORDER
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REGIONAL TRANSPORTATION AUTHORITY
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AMOUNT PAID: $12.50

RESOLUTION No. 2013-042

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE REGIONAL TRANSPORTATION AUTHORITY OF PIMA COUNTY ADOPTING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF TUCSON FOR RIGHT OF WAY ACQUISTION ALONG THE GRANT ROAD CORRIDOR (RTA #18), A TRANSPORTATION IMPROVEMENT PROJECT

WHEREAS, the Regional Transportation Authority of Pima County (the "RTA") is an Arizona special taxing district, duly formed and existing, pursuant to A.R.S. 48-5302, et seq., for the purposes of coordinating multi-jurisdictional cooperation in transportation planning, improvements and fund-raising as a municipal corporation through taxation and bonding, with the public's input and voter approval; and

WHEREAS, the City of Tucson ("Lead Agency") is a body politic and corporate of the State of Arizona; and

WHEREAS, pursuant to A.R.S. 48-5309 (A), the RTA adopted, and the voters approved, a twenty-year, comprehensive, multi-modal regional transportation plan (the "Plan"); and

WHEREAS, the Lead Agency and the RTA wish to cooperate in the Right of Way Acquistion Along the Grant Road Corridor (RTA #18) ("the Project"); and

WHEREAS, the Project is one of the transportation improvement projects included in the Plan or is eligible for funding as part of a categorical program included in the Plan; and

WHEREAS, the RTA and the Lead Agency wish to clarify their respective responsibilities in the Project, and wish to jointly exercise their powers pursuant to A.R.S. 11-952; and

WHEREAS, pursuant to A.R.S. 48-5304 (18), the RTA has the authority to enter into agreements to exercise its powers and carry out its responsibilities; and

WHEREAS, staff from the RTA and the Lead Agency have drafted an intergovernmental agreement, attached hereto as Exhibit A and incorporated herein by this reference (the "IGA"); and

WHEREAS, the Board of Directors of the RTA has reviewed the provisions of the IGA and finds that adopting it is in the best interests of the RTA and is in furtherance of the Plan.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the RTA that the IGA, attached hereto as Exhibit A, is hereby approved and adopted.

BE IT FURTHER RESOLVED that the Executive Director of the RTA is hereby authorized and directed to take all steps necessary and proper to cooperate with the Lead Agency on the Project and comply with the IGA.

PASSED AND ADOPTED by the Board of Directors of the Regional Transportation Authority this 25th of September, 2013.

Stephen W. Christy, Board Chair

Certification:

FARHAD MOHONIMI
~~Cherie Campbell~~, the ~~Interim~~ Executive Director of the RTA, hereby certifies and attests that she has access to the official records of the Board of the RTA, that the foregoing Resolution was duly adopted by the Board of the RTA, at a duly noticed and public meeting, and that this Resolution has not been altered or amended and remains in full force and effect on the date stated below.

Executive Director

Date: 10/25/13

Approved as to form:

Thomas Benavidez, Esq.

EXHIBIT A
[Intergovernmental Agreement]

INTERGOVERNMENTAL TRANSPORTATION FUNDING AGREEMENT
BETWEEN
THE REGIONAL TRANSPORTATION AUTHORITY OF PIMA COUNTY
AND
THE CITY OF TUCSON
FOR RIGHT-OF-WAY ACQUISITION FOR
THE GRANT ROAD – ORACLE ROAD TO SWAN ROAD PROJECT

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

RECITALS

A. A.R.S.§ 48-5301, et seq., authorizes the Authority to act as a regional taxing authority for the purpose of funding multi-model transportation operations and improvements identified in the Regional Transportation Plan ("the Plan") approved by the voters at the special election held in Pima County, Arizona, on May 16, 2006.

B. The governing board of the Authority is composed of representatives of each member of the regional council of governments in accordance with A.R.S. § 48-5303.

C. Pursuant to A.R.S. § 48-5304 (12), the governing board of the Authority has sole authority to implement the elements of the Plan.

D. Pursuant to A.R.S. § 48-5304 (13), the governing board of the Authority shall coordinate the implementation of the Plan among the local jurisdictions.

E. A Regional Transportation Fund was established by the Arizona Legislature per A.R.S. § 48-5307 to be the repository for those funds collected for the purpose of funding the transportation projects identified in the Plan.

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

G. The Lead Agency is authorized by Tucson Charter Chapter IV, Section 1(11) to lay out, maintain, control and manage public roads within the Lead Agency's jurisdictional boundaries.

H. The Lead Agency may have a legal contract with one or more jurisdictions within Pima County empowering the Lead Agency to perform roadway and other improvements outside the Lead Agency's jurisdictional boundaries.

I. The Lead Agency and the Authority wish to cooperate in acquisition of right-of-way for the Stone Avenue to Park Avenue segment and along the remainder of the corridor, and for demolishment or management of acquired structures ("the Project").

J. The Project is one of the transportation projects included in the Plan or is eligible for funding as part of a categorical program included in the Plan.

K. The Authority intends to fund the Project under the terms and conditions contained in this Agreement and have entered into this Agreement for that purpose.

L. It is the policy of the Authority to require that a lead agency be identified and an Intergovernmental Agreement (IGA) be approved and entered into by the Authority and the lead agency before requests for funding reimbursement or payment can be processed by the Authority.

M. The City of Tucson has been identified as the Lead Agency for the Project and will be responsible for all aspects of project implementation including, but not limited to, planning, project management, risk management, design, right of way acquisition and construction, advertisement, award, execution and administration of the design and construction contracts for the Project.

N. The RTA's Administrative Code will control all payments and other procedures unless otherwise specified herein.

O. The Authority and the Lead Agency may contract for services and enter into agreements with one another for joint and cooperative action pursuant to A.R.S. § 11-951, et seq.

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

AGREEMENT

1. Purpose. The purpose of this Agreement is to set forth the responsibilities of the parties for the design, construction, maintenance and operation of the Project and to address the legal and administrative matters among the parties.

2. Project. This Agreement will provide funding for acquisition of properties impacted by the Grant Road widening project for the segment between Stone and Park Avenues and select properties along the remainder of the Grant Road corridor. Funding will also be used to demolish or manage acquired structures.

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

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

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

4. Responsibilities of the Lead Agency.

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

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

c. The Lead Agency shall be responsible for all traffic management, including

public notification, during construction of the Project.

d. The Lead Agency shall operate and maintain the improvements during and after completion of construction.

e. The final cost of the Project shall be that amount necessary to complete the Project including any unanticipated work incorporated into the Project by change orders and amendments executed by the Lead Agency. The Lead Agency shall be responsible for all Project costs in excess of the RTA funds contributed to the Project.

f. The Lead Agency shall exercise its power of eminent domain, if necessary, to acquire property needed for the Project.

g. The Lead Agency will be responsible for assuming all risks associated with the Project except those that are assigned to another agency or jurisdiction that has agreed to that assumption.

h. The Lead Agency shall require its contractors performing any portion of the Project to name the Authority as additional insured and additional indemnitee in all of the Lead Agency's contracts for the Project. The Lead Agency shall also require its contractors to name the Authority as an additional beneficiary in any performance and payment related assurances posted for the Project.

i. The Lead Agency shall be responsible for preparing and submitting to the Authority, within the first week of each month or as otherwise specified herein, invoices for payment signed by a duly authorized representative of the Lead Agency and which include sufficient background information documenting payments made to contractors, vendors or any other eligible costs identified in this Agreement or the RTA's Administrative Code. The Lead Agency must retain and certify all vendor receipts, invoices and any related Project records as needed and ensure that they are available for review for a minimum of five (5) years after final payment is made unless otherwise specified herein.

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

5. Responsibilities of Authority.

a. Upon receipt of authorized payment requests, the Authority shall convey to the Lead Agency RTA funds in the amount specified in Exhibit A on a reimbursement basis unless otherwise specified herein. All payments and reimbursements shall follow the policies outlined in the RTA's Administrative Code.

b. Reimbursements will generally be based on the Project schedules established by the Lead Agency and contained in Exhibit A.

c. The RTA staff will review all payment requests to confirm that the request is for reimbursement of costs incurred by the Lead Agency for the Project. If the Authority determines that additional information is needed, the Lead agency will be notified of the request for additional information within five days of the receipt of the invoice by RTA.

d. Upon approval of the request by RTA, the invoice will be processed for payment within ten working days of the invoice submittal.

e. RTA shall provide all necessary cooperation and assistance to its fiscal agent to process all payment requests from the Lead Agency.

6. Termination. Either party may terminate this Agreement for material breach of the Agreement by the other party. Prior to any termination under this paragraph, the party allegedly in default shall be given written notice by the other party of the nature of the alleged default. The party said to be in default shall have forty-five days to cure the default. If the default is not cured within that time, the other party may terminate this Agreement. Any such termination shall not relieve either party from liabilities or costs already incurred under this Agreement.

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

8. Construction of Agreement.

a. Entire agreement. This instrument constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. Any exhibits to this Agreement are incorporated herein by this reference.

b. Amendment. This Agreement may be modified, amended, altered or changed only by written agreement signed by both parties.

c. 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.

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.

f. This Agreement is subject to the provisions of A.R.S. § 38-511.

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

10. Legal Jurisdiction. Nothing in this Agreement shall be construed as either limiting or extending the legal jurisdiction of the Lead Agency or the Authority.

11. No Joint Venture. It is not intended by this Agreement to, and nothing contained in this Agreement shall be construed to, create any partnership, joint venture or employment relationship between the parties or create any employer-employee relationship between the Lead Agency and any Authority employees, or between Authority and any Lead Agency employees. Neither party shall be liable for any debts, accounts, obligations nor other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for itself or any of its employees.

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

13. Compliance With Laws. The Parties shall comply with all applicable federal, state and local laws, rules, regulations, standards and executive orders, without limitation to those designated within this Agreement.

a. Anti-Discrimination. The provisions of A.R.S. § 41-1463 and Executive Order Number 99-4 issued by the Governor of the State of Arizona are incorporated by this reference as a part of this Agreement.

b. Americans with Disabilities Act. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.

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

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

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

14. Waiver. Waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

15. 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.

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

The Authority:

Executive Director
Regional Transportation Authority
177 N. Church Ave., Suite 405
Tucson, AZ 85701

City of Tucson:

Director of Transportation
201 N. Stone Ave., 6th Floor
Tucson, AZ 85701

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

18. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same

instrument. The signature pages from one or more counterpart may be removed from such counterpart and attached to a single instrument.

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

REGIONAL TRANSPORTATION AUTHORITY OF PIMA COUNTY

RTA Board Chair — Date

CITY OF TUCSON:

Jonathan Rothschild, Mayor — September 24, 2013 Date

ATTEST:

City Clerk — September 24, 2013 Date

The foregoing Agreement between the City of Tucson and the Authority has been approved as to content and is hereby recommended by the undersigned.

Daryl Cole, Director — 9/10/13 Date
City of Tucson Transportation Department

ATTORNEY CERTIFICATION

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

Regional Transportation Authority of Pima County:

Thomas Benavidez, Attorney for the Authority — 10-21-13 Date

City of Tucson:

City Attorney — 9/13/13 Date

Regional Transportation Authority of Pima County

Exhibit A to Exhibit A to Resolution No. 22141

1 **RTA Ballot/Project Number:** RTA-18

2 **RTA Plan Element:** Roadway

3 **RTA Plan Sub-Element (if applicable):**

4 **TIP Project Number:** 55.06

5 **Project Name:** Grant Road - Oracle Road to Swan Road

6 **Work Phase Covered by this Exhibit:** (check all that apply)

Planning	
Design	
Right of Way	X
Construction	
Project Management	
Environmental/Other	

7 **Project Manager Information (person responsible for status reports):**

Name: Andy McGovern
Mailing Address: 201 N Stone, Tucson AZ, 85701
Telephone Number: 837-6626
Fax. Number: 791-5209
Email Address: Andrew.McGovern@tucsonaz.gov

8 **Authorized Representative(s) (for signing & submitting pay requests):**

Name: Roy Cuaron
Mailing Address: 201 N Stone, 6th Floor, Tucson AZ, 85701
Telephone Number: 791-4371
Fax. Number: 791-4608
Email Address: Roy.Cuaron@tucsonaz.gov

Name: Tiffany Hochard
Mailing Address: 201 N Stone, 6th Floor, Tucson AZ, 85701
Telephone Number: 791-4371
Fax. Number: 791-4608
Email Address: Tiffany.Hochard@tucsonaz.gov

Name: Michael Mason
Mailing Address: P.O. 27210, Tucson AZ, 85701
Telephone Number: 791-4561
Fax. Number: 791-4364
Email Address: Michael.Mason@tucsonaz.gov

Regional Transportation Authority of Pima County
Exhibit A

9 **Map of Project Limits** No

10 **Narrative Description of Project Scope, including improvements to be made and project intent (discuss how project will address problematic areas):**

This funding will provide for acquisition of properties impacted by the widening of Grant Road between Stone and Park Avenues, currently in design, as well as to acquire select properties along the remainder of the Grant Road corridor as approved by Mayor & Council. Finally, this funding may be used to demolish or manage acquired structures, in compliance with property management guidelines being developed by the RTA.

11 **Total maximum amount of Authority funding allowed for the Project or Project component under this Exhibit:** $25,000,000.00

12 **Project Budget (current year dollars):**

	In-House	Outsourced	Total
Planning			$0
Design			$0
Right of Way	$500,000	$24,500,000	$25,000,000
Construction			$0
Project Management			$0
Environmental/Other			$0
Total RTA Project Budget (this Exhibit):	$500,000	$24,500,000	$25,000,000

13 **Total Project Budget by Funding Source**

	RTA	Non-RTA	Total
Planning			$0
Design			$0
Right of Way	$25,000,000		$25,000,000
Construction			$0
Project Management			$0
Environmental/Other			$0
Total Project Funding (all funding sources)	$25,000,000	$0	$25,000,000

14 **Funding Sources (current year dollars):**

RTA	$25,000,000
STP	
12.6 Funds	
2.4 Funds	
Impact Fees	
Bond Funds	
General Fund	
Fare Box Revenue	
FTA Funds	
Other (Federal Transportation Enhancement)	
Total Funding Sources:	$25,000,000

15 **Identify other project components not covered by this agreement (if any):**

Regional Transportation Authority of Pima County
Exhibit A

Design, right-of-way acquisition and construction of other segments.

16 **Estimated construction start date:** N/A

17 **Duration of Construction:**

18 **Expected Reimbursement Schedule:**
(related to this exhibit amount only)

	Fiscal Year 2014	Fisal Year 2015	Fiscal Year 2016
January		$500,000	$1,000,000
February		$500,000	$1,000,000
March	$500,000	$500,000	$1,000,000
April	$500,000	$500,000	$1,000,000
May	$500,000	$500,000	$1,000,000
June	$500,000	$500,000	$1,000,000
July		$500,000	$1,000,000
August		$500,000	$1,000,000
September		$500,000	$1,000,000
October		$500,000	$1,000,000
November		$500,000	$1,000,000
December		$500,000	$1,000,000
Total	**$2,000,000**	**$6,000,000**	**$12,000,000**

	Fiscal Year 2017
January	
February	
March	
April	
May	
June	
July	$1,000,000
August	$1,000,000
September	$1,000,000
October	$1,000,000
November	$1,000,000
December	
Total	**$5,000,000**

ADOPTED BY THE
MAYOR AND COUNCIL

September 24, 2013

RESOLUTION NO. 22141

RELATING TO INTERGOVERNMENTAL AGREEMENTS; APPROVING AND AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT ("IGA") BETWEEN THE CITY OF TUCSON ("CITY") AND THE REGIONAL TRANSPORTATION AUTHORITY OF PIMA COUNTY ("RTA") FOR RIGHT OF WAY ACQUISITION FOR THE GRANT ROAD – ORACLE ROAD TO SWAN ROAD – CORRIDOR PROJECT; AND DECLARING AN EMERGENCY.

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

SECTION 1. The Intergovernmental Agreement between the City and the RTA, allocating $25.0 million in RTA funding for the acquisition of rights of way associated with the Grant Road – Oracle Road to Swan Road - Corridor Project, attached hereto as Exhibit "A," is approved.

SECTION 2. The Mayor is authorized and directed to execute the said IGA for and on behalf of the City of Tucson and the City Clerk is directed to attest the same.

SECTION 3. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this Resolution.