

ADOPTED BY THE  
MAYOR AND COUNCIL

April 7, 2015

RESOLUTION NO. 22380

RELATING TO INTERGOVERNMENTAL AGREEMENTS; AUTHORIZING AND APPROVING THE EXECUTION OF AN AGREEMENT BETWEEN THE CITY OF TUCSON AND RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT RELATING TO THE DOWNTOWN TUCSON STREETScape PROJECT; AND DECLARING AN EMERGENCY.

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

SECTION 1. The Agreement between the City of Tucson and the Rio Nuevo Multipurpose Facilities District relating to the Downtown Tucson Streetscape Project, which is attached to this Resolution as Exhibit 1, is approved.


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

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

SECTION 4. WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Tucson that this Resolution become immediately effective, an

emergency is hereby declared to exist, and this resolution shall be effective immediately upon its passage and adoption.

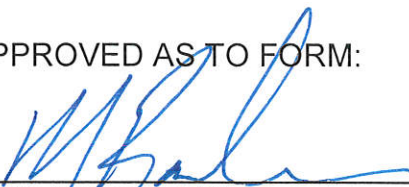
PASSED, ADOPTED, AND APPROVED by the Mayor and Council of the City of Tucson, Arizona, April 7, 2015.

  
\_\_\_\_\_  
MAYOR

ATTEST:

  
\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
CITY ATTORNEY

REVIEWED BY:

  
\_\_\_\_\_  
CITY MANAGER

MR/dg  
3/25/15

**AGREEMENT RELATED TO THE DOWNTOWN TUCSON  
STREETSCAPE PROJECT**

This Agreement (the "Agreement") is dated April 7, 2015. The parties to this Agreement are the City of Tucson, an Arizona municipal corporation ("City"), and Rio Nuevo Multipurpose Facilities District, a special taxing district of the state of Arizona ("District").

**RECITALS**

- 1) The Parties to this Agreement, amongst many other stakeholders, have been in discussion on the proposed streetscape improvements within the downtown core of the City of Tucson ("Project"). The project approach for the streetscape improvements Project is generally described in Exhibit A hereto.
- 2) In Paragraph 12 of that certain "Settlement Agreement" between City and the District, recorded on February 8, 2013 at Sequence number 20130390504 in the official records of the Pima County Recorder's Office, the District agreed to appropriate and expend certain funding for and in connection with the Project ("Paragraph 12 Obligations").
- 3) The District has authorized the expenditure of \$750,000 of the Paragraph 12 Obligations for Project improvements ("District Contribution").
- 4) By the terms of this Agreement, the City and the District (collectively the "Parties") intend to provide a process for the District's payment of the District Contribution consistent with the obligations of the parties to the Settlement Agreement and all applicable statutes, rules and codes.
- 5) The Parties acknowledge and agree that with the execution and performance of this Agreement, the Parties will have satisfied the time frame identified in Paragraph 12 of the Settlement Agreement for the performance of the Paragraph 12 Obligations.
- 6) This Agreement is an Intergovernmental Agreement entered into between the City and District pursuant to A.R.S. Section 11-952 which authorizes the City and District to contract for services and enter into agreements with one another for joint and cooperative action.

**NOW THEREFORE**, in consideration of the foregoing recitals and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

**TERMS**

- 1) **Incorporation and Representation.** The foregoing Recitals are hereby incorporated by this reference as if set forth in full herein and each of the Parties represents that such Recitals are true and accurate to the best of each signatory's knowledge, information and belief.
- 2) **City Obligations:**
  - a) All contracts for work for Project improvements to be contributed to by the District under this Agreement shall be procured in compliance with Arizona Revised Statutes, Title 34, and

the City procurement code. To the extent that the City has contractors “on call” that are capable of performing the work for the Project and whose contracts were procured as described herein, the City may utilize those contracts.

b) For any and all Project work for which City seeks payment from the District as part of the District Contribution, City shall submit all documentation providing evidence of compliance with Section 2(a) above.

c) For any Project payment request, City shall provide all invoices and documentation to the District financial staff that demonstrates and supports the Project work for which payment is sought. The documentation required includes all lien waivers and assignment of warranties from any level of contractor doing work on any portion of the Project for which payment is sought, and such other documentation reasonably deemed necessary by District staff.

d) The Project shall proceed in Phases as more particularly set forth in Exhibit B hereto. This Agreement may be amended to incorporate subsequent phases of the Project. Phase I of the Project shall be fully completed prior to proceeding to subsequent phases.

e) City shall ensure that any and all contractors on the Project shall be in strict compliance with all applicable e-verify requirements under state and federal law.

f) To the extent permitted by law, City agrees to indemnify, defend, and hold harmless the District, their governing body members, officers, employees, and agents for, from and against any and all loss, damage, and expense (including, but not limited to, reasonable investigation, legal fees, and expenses) claim or action for injury, liability, or damage to persons or property, and any and all claims, suits, judgments, costs, attorney fees, damages or other relief for loss, injury, or damage to persons or property, including claims of employees or any contractor or sub-contractor arising out of, resulting from, existing out of or through, or alleged to arise out of any work on the Project. The City shall require that all contractors at all levels of the Project shall include the District in their indemnifications related to the Project.

g) City acknowledges and agrees that any District payment made pursuant to this Agreement is and shall be funds meeting the District’s Paragraph 12 Obligation under the Settlement Agreement.

h) The City shall designate a Project Manager and main point of contact for the Project and this Agreement, and shall notify District of that designation within 15 days of the effective date of this Agreement.

3) **District Obligations:**

a) Subject to the requirements of Section 2 above, District agrees to pay invoices up to an aggregate amount of \$750,000 for work that is a part of the Project, under contracts for such work procured by the City and costs associated with City employees acting in support of the Project contracts. Payments may be made from District to the City or directly to the vendor/contractor engaged to perform the Project work, and shall be made within fourteen (14) calendar days of District receipt of all required documentation associated with a payment request. In the event the District has questions or objections to any payment request or portion thereof, the time for District

payment shall be extended until fourteen calendar (14) days after District's questions or objections are resolved to the District's satisfaction.

b) For any payment made, District shall provide a copy of the payment request and evidence of payment to City for purposes of tracking the District's ongoing fulfillment of its Paragraph 12 Obligations under this Agreement.

c) The provisions of this Agreement for payment of funds by the District shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. The District shall be the sole judge and authority in determining the availability of funds under this Agreement and the District shall keep City fully informed as to the availability of funds for the Agreement. The obligation of the District to make any payment pursuant to this Agreement is a current expense of the District, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the District. If the District, through its Board of Directors, fails to appropriate money sufficient to pay the amounts set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of then-current fiscal year and the District and City shall be relieved of any subsequent obligation under this Agreement, except that District shall be responsible for payment of costs associated with work performed pursuant to this Agreement that was performed prior to the date of the failure to appropriate as described herein. District acknowledges that District has appropriated funds in the current fiscal year for the purposes of this Agreement.

d) The District shall designate a main point of contact for the Project and this Agreement and shall notify City of that designation within 15 days of the effective date of this Agreement.

4) **Approvals and Notices.** Any objection, approval, disapproval, demand, document or other notice, ("Notice") that any Party may desire, or may be obligated to give to any other Party, shall be in writing and may be given by personal delivery, by registered or certified mail, return receipt requested, e-mail transmission (with delivery receipt) or by commercial courier to the party or its successors or assigns to whom the Notice is intended at the address of the party set forth below, or at any other address as the parties may later designate. Change of address by a party shall be given by Notice as follows:

a) If to City:

City of Tucson  
Attn: City Manager  
255 W. Alameda, 10<sup>th</sup> Floor  
P.O. Box 27210  
Tucson, AZ 85726-7210  
With a copy to:

Mike Rankin  
City Attorney  
255 W. Alameda, 7<sup>th</sup> Floor  
P.O. Box 27210  
Tucson, AZ 85726-7210

b) If to District:

Rio Nuevo Multipurpose Facilities District  
400 West Congress, Suite 152  
Tucson, Arizona 85701

With a copy to:

Mark Collins, Esq.  
Gust Rosenfeld P.L.C.  
One South Church Avenue, Suite 1900  
Tucson, Arizona 85390-4300

**5) General Provisions.**

a) *Term.* This Agreement shall remain in full force and effect until the District has expended the \$750,000 District Contribution or the Project is deemed complete, whichever is earlier.

b) *Prior Agreements.* To the extent that the terms of this Agreement are inconsistent or conflict with the terms of any prior agreements between or among the Parties, or any of them, the terms of this Agreement shall control, supersede and replace such prior agreements.

c) *Applicable Law.*

(i) City shall abide by and conform to any and all laws of the United States, and the State of Arizona, including, but not limited to, federal and state executive orders providing for equal employment and procurement opportunities, OSHA and any other federal or state laws applicable to this Agreement. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in Pima County, Arizona.

(ii) The District and/or City, pursuant to A.R.S. §38-511, may cancel this Agreement within three years after its execution, without penalty or further obligation, if any person significantly involved in initiating, securing, drafting or creating the Agreement on behalf of either party is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent to any other party of the Agreement with respect to the subject matter of the Agreement. Cancellation under this section by a party shall be effective when all other parties to the Agreement receive written notice from the other party unless the notice specifies a later time. In addition to the right to cancel as provided herein, a party may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the party from any other party to the Agreement arising as the result of this Agreement.

d) *No Assignments.* None of the Parties' rights or obligations may be assigned, transferred, conveyed or otherwise alienated and any attempt to do so is and shall be null and void.

e) *Authority.* Each of the signatories to this Agreement represents and warrants to each of the Parties that such signatory is fully authorized to execute this Agreement without the necessity of obtaining consent or authority from any other entity or individual. To the extent that any signatory is signing on behalf of another entity or individual, that signatory represents and warrants to each of the Parties that such signatory is fully authorized to execute this Agreement on behalf of its principal without the necessity of obtaining consent or authority from any other entity or individual and that by such execution, the principal is bound by the terms of this Agreement.

f) *Section Headings.* The section headings of this Agreement are inserted as a matter of convenience and reference only and in no way define, limit, or describe the scope or intent of either this Agreement or its terms or provisions.

g) *Supplemental Instruments.* The Parties shall execute any and all additional documents reasonably necessary to effectuate the terms of this Agreement.

h) *Representation by Counsel.* Each of the Parties represents and acknowledges that he, she or it has had the benefit and advice of independent legal counsel in connection with the preparation and execution of this Agreement or has been advised to seek such counsel and has voluntarily and knowingly chosen not to do so.

i) *Voluntary and Knowing Execution.* The terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings and the Parties waive the application of that rule of law dictating that ambiguous or conflicting terms in an agreement shall be interpreted or construed against the party who prepared the executed draft or earlier drafts of such agreement.

j) *Entire Agreement.* Except as otherwise specifically provided herein, this Agreement represents the entire understanding among the Parties with respect to its subject matter. No representations, warranties, inducements or oral agreements have been made by, between or among any of the Parties except as expressly set forth herein or in other contemporaneous written agreements. This Agreement may not be changed, modified or rescinded, except in writing, signed by all Parties hereto, and any attempt at oral modification of this Agreement shall be void and of no force and effect.

k) *Execution in Counterpart.* This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. This Agreement may contain more than one counterpart of the signature pages and this Agreement may be executed by the affixing of the signature pages and all such counterpart signature pages shall be read as though part of a single document, and they shall have the same force and effect as though all the signers had signed a single signature page.

l) *No third party beneficiary.* 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, and no third-party shall be entitled to rely upon, benefit from or enforce the terms of this Agreement.

m) *Project Plan: Organization Chart.* The attached Exhibit C identifies the Project Plan and Organization Chart for the Project.

Date April 7, 2015

Attest:



Roger Randolph, City Clerk

Date: April 7, 2015

CITY

By:



Its Authorized Representative  
Mayor, Jonathan Rothschild

DISTRICT

Date \_\_\_\_\_

By: \_\_\_\_\_

Its Authorized Representative

Date \_\_\_\_\_

By: \_\_\_\_\_

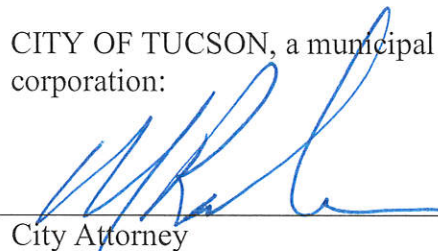
Its Authorized Representative

Pursuant to A.R.S. § 11-952 (D), the attorneys for the City and District hereto have determined that the foregoing is in proper form and is within the powers and authority granted under the laws of this State to the City and District.

RIO NUEVO MULTIPURPOSE  
FACILITIES DISTRICT,

CITY OF TUCSON, a municipal  
corporation:

\_\_\_\_\_  
District Attorney

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



CITY

Date \_\_\_\_\_

By: \_\_\_\_\_  
Its Authorized Representative

DISTRICT

Date 4-6-15

By: \_\_\_\_\_  
Its Authorized Representative CHAVE PERSONI  
Fletcher  
Macusler

Date 4/6/15

By: \_\_\_\_\_  
Its Authorized Representative SECRETARY  
MARK IRVIN

Pursuant to A.R.S. § 11-952 (D), the attorneys for the City and District hereto have determined that the foregoing is in proper form and is within the powers and authority granted under the laws of this State to the City and District.

RIO NUEVO MULTIPURPOSE  
FACILITIES DISTRICT,

\_\_\_\_\_  
District Attorney

CITY OF TUCSON, a municipal  
corporation:

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

**Downtown Streetscape****PROJECT PLAN:  
PROJECT APPROACH****Project Goals**

1. Improve the safety of the Downtown streets for pedestrians and vehicles.
  - Scott Avenue – Pennington to Congress
  - Art and banners in specific locations
2. Improve the aesthetics of the Downtown streets for residents, visitors, and businesses.
  - Scott Avenue – Pennington to Congress
  - Art and banners in specific locations
3. Establish a streetscape standard for Downtown streets.
  - Hardscape
  - Landscape
  - Site amenities
  - Standard to consider maintenance and durability of materials
4. Establish streetscapes that support and encourage an economically vibrant Downtown.

**Scope of Work**

- Developed by the City of Tucson.
- See Downtown Streetscape Improvements: Phased Scope of Work - Exhibit B.
- Scope of Work to be approved by City of Tucson and Rio Nuevo.
- Scope of work to be executed using City of Tucson standards for right-of-ways, hardscapes, landscapes, site furnishings, irrigation, art, and street lighting.

**Roles and Responsibilities**

- Project design and construction managed by the City of Tucson.
- Coordination with project stakeholders to be managed by the City of Tucson.
- Stakeholders to include
  - City of Tucson – Manager's Office
  - City of Tucson Transportation Department
  - Rio Nuevo Multi-Purpose District ("District")
  - Downtown Tucson Partnership
  - Property Owners
  - Merchants
  - Festivals and Events

**Procurement**

- Procured through City of Tucson Procurement Code using existing on-call contracts.

**Invoices and Payments**

- City of Tucson Project Administrator and Project Manager to review and approve all project expenditures.
- City of Tucson Project Administrator to provide all invoices and documentation to the District for payment.

#### **Project Budget and Schedules**

- Design and construction schedules to be established and managed by City of Tucson Project Administrator and Project Manager.
- Overall project budget to be managed by City of Tucson Project Administrator and Project Manager.

#### **Project Communications**

- City of Tucson Project Administrator to provide updates and project information as requested.
- City of Tucson Project Administrator to manage and communicate directly with project stakeholders.
- City of Tucson Project Manager to manage and communicate directly with consultants.
- M&C updated on project status on an as needed basis.
- The District and project stakeholders updated monthly on project status.

## Downtown Streetscape

### Project Plan - Phased Scope of Work

Scope of Work limited to right-of-way.

PHASE 1	SCOTT AVENUE: PENNINGTON TO CONGRESS
	New hardscape
	New sidewalks
	New site amenities
	Benches
	Trash / recycle receptacles
	Planters
	Bike Racks
	Streetlights
	Rehabilitate / add historic street lights
	Casual decorative lighting - string lights
	New landscaping
	Potentially adjust existing soil
	Associated power
	Earthwork, grading, and drainage
	New irrigation

PHASE 2	ART AND BANNERS
	Banners - TCC and Mercado
	Public Art Mercado District

#### PROJECT SOFT COSTS (Apply to all Phases)

Construction Survey and Layout  
 Electrical Service  
 Fencing  
 Traffic Control  
 Permits  
 Project Management Fees  
 Design Fees  
 General Conditions

NOTE: SCOPE OF WORK TO INCLUDE PHASES 3 - 5 PENDING COMPLETION OF PHASES 1 AND 2

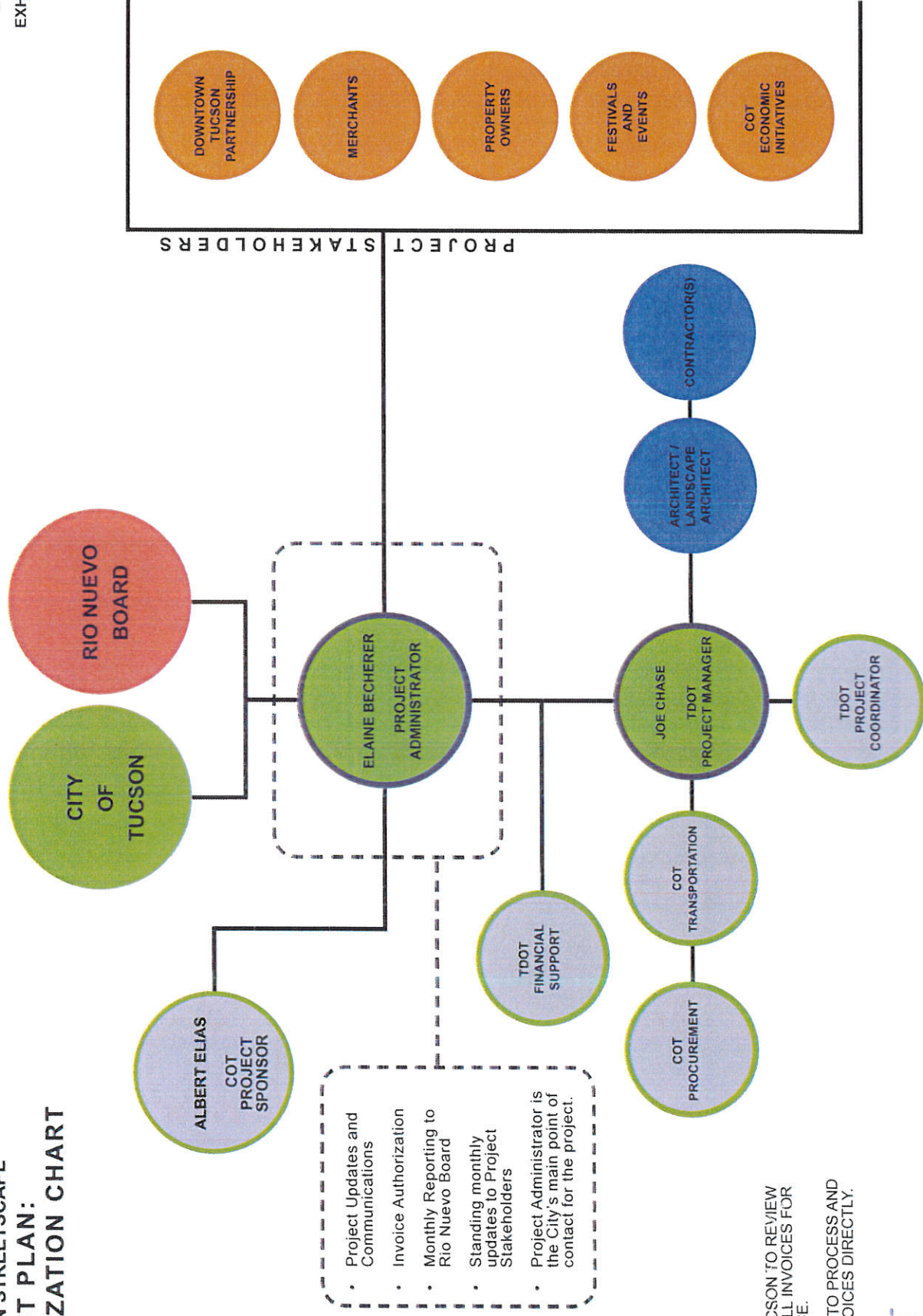
PHASE 3	SCOTT AVE. AND CONGRESS: SE CORNER - EAST SIDE AT WIG-O-RAMA
	Remove existing sidewalk
	New brick pavers
	New concrete
	Planters
	Trees - 36 box
	Shrubs - 1 gallon
	Street lighting
	Irrigation

PHASE 4	ARIZONA AVE.
	Move existing power lines underground

PHASE 5	MISCELLANEOUS ITEMS
	Solar Lights on Toole Ave.
	Dusk to Dawn TEP lights
	Shade Structures at intersections (11)

# DOWNTOWN STREETSCAPE PROJECT PLAN: ORGANIZATION CHART

03.19.15  
EXHIBIT C



## NOTES:

1. CITY OF TUCSON TO REVIEW AND SIGN ALL INVOICES FOR COMPLIANCE.
2. RIO NUEVO TO PROCESS AND PAY ALL INVOICES DIRECTLY.

DRAFT