



BOARD OF SUPERVISORS AGENDA ITEM REPORT AWARDS / CONTRACTS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: 9/5/23

* = Mandatory, information must be provided

or Procurement Director Award: ☐

***Contractor/Vendor Name/Grantor (DBA):**

City of Tucson

***Project Title/Description:**

Intergovernmental Agreement (IGA) between Pima County Regional Flood Control District (District) and City of Tucson (City) for Design, Construction, and Maintenance of Land Management Improvements in the Avra Valley.

***Purpose:**

This IGA pertains to establish conditions, responsibilities and expectations regarding the design, construction, and maintenance of land management improvements on District, Pima County, and City of Tucson lands in the Brawley Wash Watershed and in Avra Valley in unincorporated Pima County.

***Procurement Method:**

This IGA is a non-Procurement contract and not subject to Procurement rules.

***Program Goals/Predicted Outcomes:**

This District will be able to implement projects described in the IGA for purposes of flood risk mitigation, water resource benefit, habitat restoration, and erosion reduction. These projects may also provide an additional benefit to the City in terms of reduced operation and maintenance costs of City-owned land.

***Public Benefit:**

This IGA provides the District with greater opportunities to implement landscape scale improvements which supports the District's goals of reducing flood risk, enhancing riparian areas, beneficially using storm water and mitigating erosion risk in Pima County. The goals are identified in the Board adopted Floodplain Management Plan.

***Metrics Available to Measure Performance:**

Number of projects completed on County, District and City lands in the Brawley Wash and Avra Valley.

***Retroactive:**

No.

TO: COB 8-10-23 (3)
Vers.: 1
pgs.: 8

9/5/23 PM 01:57:40

THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED

Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (*) fields

Contract / Award Information

Document Type: CT Department Code: FC Contract Number (i.e., 15-123): 24*057
Commencement Date: 9/5/23 Termination Date: 9/4/2048 Prior Contract Number (Synergen/CMS): _____
☐ Expense Amount \$ _____ * ☐ Revenue Amount: \$ _____

***Funding Source(s) required: Flood Control Ops**

Funding from General Fund? ☐ Yes ☒ No If Yes \$ _____ % _____

Contract is fully or partially funded with Federal Funds? ☐ Yes ☒ No

If Yes, is the Contract to a vendor or subrecipient? _____

Were insurance or indemnity clauses modified? ☐ Yes ☒ No

If Yes, attach Risk's approval.

Vendor is using a Social Security Number? ☐ Yes ☒ No

If Yes, attach the required form per Administrative Procedure 22-10.

Amendment / Revised Award Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____

Amendment No.: _____ AMS Version No.: _____

Commencement Date: _____ New Termination Date: _____

Prior Contract No. (Synergen/CMS): _____

☒ Expense ☐ Revenue ☐ Increase ☐ Decrease

Amount This Amendment: \$ _____

Is there revenue included? ☐ Yes ☒ No If Yes \$ _____

***Funding Source(s) required: _____**

Funding from General Fund? ☐ Yes ☒ No If Yes \$ _____ % _____

Grant/Amendment Information (for grants acceptance and awards)

☒ Award ☐ Amendment

Document Type: _____ Department Code: _____ Grant Number (i.e., 15-123): _____

Commencement Date: _____ Termination Date: _____ Amendment Number: _____

☐ Match Amount: \$ _____ ☐ Revenue Amount: \$ _____

***All Funding Source(s) required: _____**

***Match funding from General Fund?** ☐ Yes ☒ No If Yes \$ _____ % _____

***Match funding from other sources?** ☐ Yes ☒ No If Yes \$ _____ % _____

***Funding Source: _____**

***If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?**

Contact: Eric Shepp (M. Guzman 4-4611 for P/U)

Department: Pima County Regional Flood Control District

Telephone: (520) 724-4610

Department Director Signature: _____ Date: 8/7/23

Deputy County Administrator Signature: _____ Date: 8/8/2023

County Administrator Signature: _____ Date: 8/8/2023

**Intergovernmental Agreement
between
Pima County Regional Flood Control District and City of Tucson
for
Design, Construction, and Maintenance of
Land Management Improvements in the Avra Valley**

This Intergovernmental Agreement (IGA) is entered into by and between Pima County Flood Control District ("District"), a political taxing subdivision of the State of Arizona, and City of Tucson, a municipal corporation ("City") pursuant to A.R.S. § 11-952.

Recitals

- I. The District is authorized by A.R.S. § 48-3603(C)(3) to contract and join with any other flood control district, municipality, political subdivision, or governmental agency in acquiring, constructing, maintaining and operating flood control works.
- II. The City and the District have statutory authority to enter into intergovernmental agreements for joint and cooperative action pursuant to A.R.S. §§ 11-952 and 48-3603(C)(9).
- III. Pima County and the District have acquired over 50,000 noncontiguous acres of land located west of the City limits between the Tucson Mountains to the east and the Waterman and Roskrige Mountains to the west and within the unincorporated Brawley Wash area of Pima County, for the purpose of land preservation and acquisition of floodprone land.
- IV. The City has acquired over 22,000 noncontiguous acres of former agricultural lands located west of the City limits between the Tucson Mountains to the east and the Waterman and Roskrige Mountains to the west and within the unincorporated Avra Valley area of Pima County, for the purpose of acquiring water rights, preserving groundwater, and developing water infrastructure supply projects.
- V. Pima County, the District and the City agree that there is a regional benefit to managing flood flows across their lands in the Brawley Wash and unincorporated Avra Valley.
- VI. Pima County and the District manage land in accordance with the requirements of the Sonoran Desert Conservation Plan (SDCP) and Pima County's Multispecies Conservation Plan (MSCP).
- VII. The District has authority or, when necessary, will seek authority from Pima County through separate agreement(s) to manage the County's land in the Brawley Wash area for the purpose of flood risk mitigation, habitat restoration, and erosion reduction.
- VIII. The City manages its Avra Valley lands in accordance with a Habitat Conservation Plan (HCP), which designates suitable species habitat within Avra Valley for the City's future compliance with the Endangered Species Act in connection with City projects.

- IX. The City has committed to erecting and maintaining wildlife-friendly fences around land in its Avra Valley HCP Permit Area that contain modeled, covered species habitat, with the intention of preventing unauthorized entry onto the land by foot, vehicle, or grazing animals.
- X. The District, Pima County, and the City recognize that there are potential land management benefits of fence removal between contiguous lands, where appropriate.

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

Agreement

- A. **Purpose.** The purpose of this IGA is to establish conditions, responsibilities and expectations regarding the design, construction, and maintenance of land management improvements ("Projects") on District, Pima County, and City lands in the Brawley Wash and unincorporated Avra Valley. For the District, the benefits of implementing these Projects are flood risk mitigation, habitat restoration, and erosion reduction. Additional benefits for the City include reduced maintenance costs for infrastructure and land management.
- B. **Scope of Cooperative Action.**
 - 1. The District and the City will maintain a list of City, Pima County, and District lands that the District and City agree are appropriate locations for Projects.
 - 2. The District and the City will collaborate on the design and construction of all Projects irrespective of where the Projects are located.
 - 3. The District is responsible for the final design of Projects on District and Pima County lands. The City is responsible for the final design of Projects on City-owned lands.
 - 4. The District shall facilitate a right of entry for the City to complete agreed-upon work for a Project on District or Pima County lands, at no cost to the City. The City shall facilitate a right of entry for the District to complete agreed-upon work for a Project on City land, at no cost to the District. The District and the City will collaborate to develop protocols for mutual access to the lands covered by this IGA.
 - 5. After completion of construction of a Project on District and Pima County land, the District is responsible for maintaining the modified conditions on the land. After completion of construction of a Project on City land, the City is responsible for maintaining the modified conditions on the land.
 - 6. The City and District will jointly explore the potential for the removal of fences on contiguous District, City, and Pima County lands.

7. The District and City will collaborate to eradicate invasive species, including buffelgrass, on District, City, and Pima County lands.

C. Financing.

1. The District is responsible for the costs of designing and constructing Projects and maintaining the modified conditions on District and Pima County lands.
2. The City is responsible for the costs of designing and constructing Projects and costs of maintaining the modified conditions on City land.
3. If the District and the City agree to remove fences on contiguous District, City, and Pima County lands, the District and City will share the cost of removal.
4. If federal funding becomes available for the cost of constructing any Projects and a condition of that funding requires matching funds, the City and the District will consult with one another regarding responsibility for any required match prior to accepting the funding.

D. Term. This IGA will be effective on the date it is fully executed by both parties and will continue for a period of 25 years unless it is, prior to the expiration of such period, extended or terminated by agreement of the parties.

E. Disposal of Property. Upon the termination of this IGA, all property involved will revert back to the owner. Termination will not relieve any party from liabilities or costs already incurred under this IGA, nor affect any ownership of property pursuant to this IGA.

F. Indemnification. Each party (as Indemnitor) agrees to indemnify, defend and hold harmless the other party (as Indemnitee) from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") for bodily injury of any person (including death) or property damage, but only to the extent that such injury or damage is caused or alleged to be caused by a negligent or intentionally wrongful act or omission of the Indemnitor, or of any of its officers, officials, agents, employees, or volunteers.

G. Insurance. Each party will obtain and maintain at its own expense, during the entire term of this IGA the following type(s) and amounts of insurance:

1. Commercial General Liability in the amount of \$2,000,000.00 combined single limit Bodily Injury and Property Damage.
2. Commercial or Business automobile liability coverage for owned, non-owned and hired vehicles used in the performance of this IGA with limits in the amount of \$2,000,000.00 combined single limit or \$1,000,000.00 Bodily Injury, \$1,000,000.00 Property Damage.

3. If required by law, workers' compensation coverage including employees' liability coverage.

Each party will provide thirty (30) days written notice to the other party of cancellation, non-renewal or material change of coverage.

The above requirement may be alternatively met through self-insurance pursuant to A.R.S. §§ 11-261 and 11-981 or participation in an insurance risk pool under A.R.S. § 11.952.01, at no less than the minimum coverage levels set forth in this section.

- H. Compliance with Laws.** The parties will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders. The laws and regulations of the State of Arizona will govern the rights of the parties, the performance of this IGA and any disputes. Any action relating to this IGA will be brought in a court in Pima County.
- I. Non-Discrimination.** The parties will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin in the course of carrying out their duties under this IGA. The parties will comply with the provisions of Executive Order 75-5, as amended by Executive Order 2009-09, which is incorporated into this IGA by reference.
- J. ADA.** The parties will comply with 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.
- K. Severability.** If any provision of this IGA, or any application of a provision to the parties or any person or circumstance, is found by a court to be invalid, that invalidity will not affect other provisions or applications of this IGA that can be given effect without the invalid provision or application.
- L. Conflict of Interest.** This IGA is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated herein by reference.
- M. Non-Appropriation.** Notwithstanding any other provision in this IGA, this IGA may be terminated if for any reason the Pima County Flood Control District Board of Directors or the City of Tucson Mayor and Council does not appropriate sufficient monies for the purpose of maintaining this IGA. In the event of such cancellation, the parties will have no further obligations under this IGA other than for payment for services rendered prior to cancellation.
- N. Legal Authority.** Neither party warrants to the other its legal authority to enter into this IGA. If a court, at the request of a third person, should declare that either party lacks authority to enter into this IGA, or any part of it, then the IGA, or parts of it affected by such order, will be null and void, and no recovery may be had by either party against the other for lack of performance or otherwise.

- O. Worker's Compensation.** Each party will comply with the notice of A.R.S. § 23-1022 (E). For purposes of A.R.S. § 23-1022, irrespective of the operations protocol in place, each party is solely responsible for the payment of Worker's Compensation benefits for its employees.
- P. No Joint Venture.** It is not intended by this IGA to, and nothing contained in this IGA will be construed to, create any partnership, joint venture or employment relationship between the parties or create any employer-employee relationship between a party and the employees of the other party. Neither party will 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.
- Q. No Third Party Beneficiaries.** Nothing in this IGA is intended to create duties or obligations to or rights in third parties not parties to this IGA or affect the legal liability of either party to the IGA by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.
- R. Notice.** Any notice required or permitted to be given under this IGA must be in writing and served by electronic mail, delivery or by certified mail upon the other party as follows (or at such other address as may be identified by a party in writing to the other party):

District:

Director
Pima County Regional Flood
Control District
201 N. Stone Ave 9th Floor
Tucson AZ 85701

City of Tucson:

Director
Tucson Water
310 West Alameda St.
Tucson, AZ 85705

Email is the preferred method of notice. Representatives of each party will maintain current email contacts with representatives of the other party. The parties will strive to notify each other of changes to email points of contact. Notice sent via email shall be deemed sufficient if it is acknowledged by at least one person from the receiving party. Acknowledgment of the notice may be made by a person sending a return email confirming receipt or otherwise indicating to the sending party in a written form that the notice has been received. If receipt is not so acknowledged, notice may be sent by one of the other methods identified in this Section.

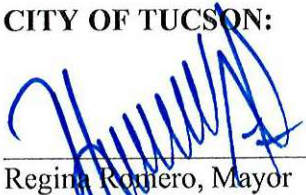
A notice sent in compliance with the provisions of this Section shall be deemed given on the date receipt is confirmed (or the date of attempted delivery if by hand-delivery or courier service if delivery is refused).

- S. Entire Agreement.** This document, and any exhibits attached to it, constitutes the entire agreement between the parties pertaining to the subject matter addressed, and all prior or contemporaneous agreements and understandings, oral or written, are superseded and

merged into this IGA. This IGA may not be modified, amended, altered or extended except through a written amendment signed by the parties.

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

CITY OF TUCSON:



Regina Romero, Mayor

July 18, 2023

Date:

ATTEST:



Suzanne Mesich, City Clerk

July 18, 2023

Date:


**PIMA COUNTY REGIONAL FLOOD
CONTROL DISTRICT:**

Chair
Board of Directors

ATTEST:

Clerk of the Board

APPROVED AS TO CONTENT:



Eric Shepp, Regional Flood Control District
Director

Intergovernmental Agreement Determination

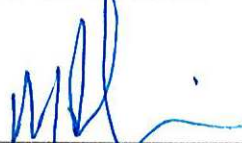
The foregoing Intergovernmental Agreement between Pima County Flood Control District and the City of Tucson has been reviewed by the undersigned, each of whom has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the party he or she represents.

**PIMA COUNTY
FLOOD CONTROL DISTRICT:**



Bobby Yu, Deputy County Attorney

CITY OF TUCSON



City Attorney, Mike Rankin

July 18, 2023

Date: