Contract Number: CT-FC-14*237
Effective Date : 1-7-2014
Term Date : 1-7-2039
Cost : ✓
Revenue : ✓
Total : NTE:
Action
Renewal By : 10-1-2038
Term : 1-7-2039
Reviewed by:

BOARD OF SUPERVISORS AGENDA ITEM SUMMARY

Requested Board Meeting Date: January 7, 2014

ITEM SUMMARY, JUSTIFICATION &/OR SPECIAL CONSIDERATIONS:

This proposed Intergovernmental Agreement (IGA) is between Pima County (County), Pima County Regional Flood Control District (District), and the City of Tucson (City), for the maintenance of the major watercourses and river parks within the City's incorporated limits. The City and the County have a long history of implementing flood control improvements with ancillary river park improvements along the Santa Cruz River, Rillito River, and the Pantano Wash. The maintenance responsibilities for these facilities are currently shared between the City and County. Flood control improvements and river park segments of City-owned lands are generally maintained by both the City and the County and the remaining segments are maintained by the District. This current allocation of responsibilities is confusing and inefficient.

This IGA would provide for the County and the District to maintain and operate flood control improvements and river parks along the Santa Cruz River from Rillito River to Valencia Road and the Pantano Wash from Craycroft Road to Harrison Road. The City will convey to the County and to the District, perpetual easements in favor of the County and the District over the segments of City-owned property along the rivers for the purpose of access and maintenance of the rivers, including all flood control and river park facilities, for the benefit of the public.

CONTRACT NUMBER (if applicable): 14*237

STAFF RECOMMENDATION(S):

Approval.

CORPORATE HEADQUARTERS: City of Tucson

Ver-1
Vendor-1
Pgs. 27

To: COB - 12-24-13
Agenda 1-7-14
(3)

PROCURE DEPT 12/11/13 AM09:42

CLERK OF BOARD USE ONLY: BOX M.G._____

ITEM NO._____

PIMA COUNTY COST: $0_____ **and/or REVENUE TO PIMA COUNTY:**$___NA_____

FUNDING SOURCE(S): Flood Control Tax Levy
(i.e., General Fund, State Grant Fund, Federal Fund, Stadium D Fund, etc.)

Advertised Public Hearing:

[ ] **YES** [X] **NO**

Board of Supervisors District:

1 [ ] 2 [ ] 3 [ ] 4 [ ] 5 [ ] All [X]

IMPACT:

IF APPROVED:
County maintenance and operations of the river parks will provide a consistent, standardized level of development and maintenance of the region's multi-model, multi-use recreational infrastructure, thus meeting the goals of the Pima Regional Trail System Master Plan. The District will be able to more efficiently manage flood control infrastructure along the major river system for the protection of public safety and property from flooding.

IF DENIED:

This current allocation of responsibilities will remain split between the County and the City. This is confusing to the public and an inefficient use of resources.

DEPARTMENT NAME: Regional Flood Control District

DEPARTMENT DIRECTOR: Suzanne Shields, P.E.

DIRECTOR'S SIGNATURE: Suzanne Shields Date 12/10/13

CONTACT PERSON: Suzanne Shields TELEPHONE NO.: 724-4680

***Return item to processing contact person.**

CONTRACT
NO. CT-FC-14 000000000000237
AMENDMENT NO. _____
This number must appear on all invoices, correspondence and documents pertaining to this contract.

Intergovernmental Agreement
between
Pima County,
the Pima County Regional Flood Control District,
and the City of Tucson
for Maintenance of Major Watercourses and River Parks

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

Recitals

A. County, District, and City may contract for services and enter into agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-951, et seq.

B. The County is authorized by A.R.S. § 11-932 to maintain and improve land it owns or acquires for the use and purpose of a public park.

C. The City is authorized by A.R.S. § 9-494 to maintain and improve land it owns or acquires for the use and purpose of a public park.

D. The District is authorized by A.R.S. § 48-3603(C)(3) to contract with other public entities for the purpose of acquiring, constructing, maintaining and operating flood control works.

E. The County, District, and City wish to cooperate with respect to the construction, maintenance and operation of the flood control infrastructure and associated river park system commonly known as The Loop.

F. The City currently operates and maintains an existing river park system at:

1. Santa Cruz River Park: the east bank from Speedway to St. Mary's Road; east and west bank from St. Mary's to Mission Lane (or Simpson); and east and west bank from Irvington to Drexel;

2. Pantano River Park, east and west bank from Tanque Verde Road to Speedway Boulevard; from Entrada to Broadway along the east bank; east bank from Kenyon to Sellarole; and from Golf Links to Stearn Lake Drive on the west bank.

G. The County and the District currently operate and maintain an existing flood control infrastructure and river park system within the City of Tucson incorporated limits including:

Exhibit A to Resolution No. 22167
City of Tucson Contract No. 17885

1. Rillito River and River Park, along the north and south banks from the Santa Cruz River to Craycroft Road.

2. Portions of the Santa Cruz River Park, from the Rillito River to Speedway including that portion of the river park along Christopher Columbus Park and the Silverbell Golf Course; the west bank from Speedway to St. Mary's Road; and the west and east bank from Mission Lane to Irvington.

3. Julian Wash Greenway, from the Santa Cruz River to Rita Road (as previously described in the IGA, Pima County Contract No. 12000000000000001944 and Mayor and Council Resolution No. 21845).

4. Harrison Greenway from Pantano Wash at Sellerole Road to the Julian Wash (as previously described in the IGA, Pima County Contract No. 12000000000000001944 and Mayor and Council Resolution No. 21845).

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

Agreement

1. **Purpose.** The purpose of this IGA is to set forth the agreement of the parties with respect to identifying the District's role in the maintenance of flood control infrastructure and river parks within the incorporated limits of the City of Tucson for the Santa Cruz River and Pantano Wash ("Rivers") as shown in **Exhibits A and B,** respectively. Some segments of the Rivers lie on land owned or controlled by the County and District, while other segments lie on land owned or controlled by the City. It is the intent of this IGA that the City grants to the County and District easements to provide maintenance for flood control infrastructures and river park improvements on the lands owned or controlled by the City.

2. **Scope**. The scope of this Agreement includes the following two segments of the Loop:

   a. **Santa Cruz River from Rillito River to Valencia Road** – The existing river and park improvements along the Santa Cruz River from El Camino del Cerro to Valencia including the bank protection, channel and all river park improvements as shown in **Exhibit A** attached hereto. The improvements excluded from this Agreement along the Santa Cruz River are:

      i. The Garden of Gethsemane at 670 West Congress Avenue and adjacent park improvements between Congress and Alameda at 660 West Alameda St (aka Bonita Park).

      ii. Plaza at 1 North Freeway which is under the ownership of the State of Arizona.

   b. Pantano Wash from Craycroft Road to Harrison Road. The existing river and park improvements including bank protection, channel and all river park improvements

from upstream of Tanque Verde Road to Sellarole Road as shown in **Exhibit B attached**. The improvements excluded from this Agreement along the Pantano Wash are:

i. Fort Lowell Park

ii. Stefan Gollob Park;

iii. Michael Perry Park including the Childrens' Memorial Garden.

3. **Maintenance and Financing**. County and District will maintain and operate the Rivers at their own expense. Upon full execution of this Agreement by all parties, The City will convey to the County and to the District, under terms reasonably acceptable to the City, perpetual easements in favor of the County and the District over the segments of City-owned property along the Rivers for the purpose of access and maintenance of the Rivers, including all flood control and river park facilities, for the benefit of the public. County and District will provide the City with the maintenance and operation plans for the City-owned lands including any major maintenance work, events, closures or other activities that would impact the public use of the Rivers as necessary, subject to the City's review and approval.

   a. **Maintenance Area.** Maintenance responsibilities for river and park improvements shall generally be limited to a fifty (50) foot easement outward from the top of the existing bank protection a shown in **Exhibit C**. However, if a defining riverpark boundary such as a fence or post and cable currently exists, then this easement shall be defined by said boundary. Where a defining boundary such as a fence or post and cable does not exist, the area to be maintained will be measured from the top of bank to ten (10) feet beyond the furthest established paved or decomposed granite pathway(s) including the irrigated area and the associated landscaping. Where a Divided Urban Pathway exists, the maintenance will be within a one hundred (100) foot easement outward from the top of the bank protection as shown in **Exhibit D**.

   b. **Maintenance by County and District.** The maintenance to be performed by the County and District will include:

      i. Flood damage repairs, inspection and maintenance of bank protection, grade controls and river channel sediment and erosion controls.

      ii. Routine and annual maintenance of asphalt pathways, decomposed granite pathways, sediment removal, parking areas, weed control, erosion control, drainage including post storm repairs, litter and graffiti control, landscaping and irrigation.

   c. **Maintenance by City.** The maintenance of street bridges, adjacent park facilities, comfort stations, play grounds or other recreation facilities will remain the responsibility of the City.

i. Maintenance of the Santa Cruz River and River Park between Irvington to Drexel will be performed by the City until such time as improvements are made in accordance with the plans approved by the District and County. After the improvements are completed the District and County will assume maintenance.

d. **Site Specific Responsibilities.** Memorandums of understanding ("MOU (s)") concerning site specific maintenance responsibilities, notification of emergency flood response activities, capital improvements or special events, etc. will be developed and agreed upon, and may be amended from time to time, in writing and signed by the City Manager and the County Administrator.

4. **Term**. This IGA will be effective on the date it is fully executed by all parties and will terminate on the twenty-fifth (25th) anniversary of the effective date unless the Agreement is extended by the parties in writing prior to the 25th anniversary date.

5. **Ownership of Property**. Each party will continue to own its real property. Portions of the Rivers operated and maintained by the County and District on City owned land will belong to the City subject to the easement rights conveyed pursuant to Section 3 above.

6. **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") arising out of bodily injury of any person (including death) or property damage caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

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

a) Commercial General Liability in the amount of $1,000,000.00 combined single limit Bodily Injury and Property Damage.

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

c) If this Contract involves professional services, professional liability insurance in the amount of $1,000,000.00.

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

The above requirements 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 minimal coverage levels set forth in this article. Each party will provide thirty (30) days written notice to the other of cancellation, non-renewal or material change of coverage.

8. **Compliance with Laws**. The parties shall comply with all federal, state and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this IGA. The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this IGA and any disputes hereunder. Any action relating to this IGA shall be brought in an Arizona court in Pima County.

9. **Non-Discrimination**. The parties shall not discriminate against any County 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 pursuant to this IGA. The parties shall comply with the provisions of Executive Order 75-5, as amended by Executive Order 2009-09, which is incorporated into this IGA by reference, as if set forth in full herein.

10. **ADA**. The parties shall 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.

11. **Severability**. If any provision of this IGA, or any application thereof to the parties or any person or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of this IGA which can be given effect, without the invalid provision or application and to this end the provisions of this IGA are declared to be severable.

12. **Conflict of Interest**. This contract 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.

13. **Non-Appropriation.** Not withstanding any other provision in this IGA, this IGA may be terminated if for any reason the Pima County Board of Supervisors does not appropriate sufficient monies for the purpose of maintaining this IGA.

14. **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, shall be null and void, and no recovery may be had by either party against the other for lack of performance or otherwise.

15. **Worker's Compensation.** Each party shall 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.

16. **No Joint Venture**. It is not intended by this IGA to, and nothing contained in this IGA 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 the City and any County employees. Neither 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.

17. **No Third Party Beneficiaries**. Nothing in the provisions of this IGA is intended to create duties or obligations to or rights in third parties not parties to this IGA or effect 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.

18. **Notice**. Any notice required or permitted to be given under this IGA shall be in writing and shall be served by 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) :

Pima County:
Public Works Director
130 West Congress Street
Tucson, Arizona 85701

Pima County Regional Flood Control District:
Chief Engineer
97 E. Congress, 3rd Floor
Tucson, Arizona 85701

With copies to:
County Administrator
130 West Congress Street, 10th Floor
Tucson, Arizona 85701

Clerk of the Board
130 West Congress, 5th Floor
Tucson, Arizona 85701

City of Tucson:
Parks & Recreation Director
900 S. Randolph Way
Tucson, Arizona 85716

With copies to:
City Manager
255 W. Alameda
Tucson, Arizona 85701

City Clerk
255 W. Alameda
Tucson, Arizona 85701

19. **Entire Agreement**. This document 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. This IGA shall not be modified, amended, altered or extended except through a written amendment signed by the parties and recorded with the Pima County Recorder, or Arizona Secretary of State, whichever is appropriate.

In Witness Whereof, each party has caused this Agreement to be passed and approved by its respective Board of Supervisors, Board of Directors, or Mayor and Council, and have caused this Agreement to be properly executed as demonstrated below:

PIMA COUNTY:

Ramón Valadez, Chairman
Board of Supervisors

ATTEST:

Clerk of the Board

CITY OF TUCSON:

Jonathan Rothschild, Mayor December 2, 2013

ATTEST:

City Clerk December 2, 2013

PIMA COUNTY REGIONAL FLOOD CONTROL DISTRICT:

Ramón Valadez, Chairman
Board of Directors

ATTEST:

Clerk of the Board

Intergovernmental Agreement Determination

The foregoing Intergovernmental Agreement between Pima County, Pima County Flood Control District and the City of Tucson has been reviewed pursuant to A.R.S. § 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 represented by the undersigned.

PIMA COUNTY:

Deputy County Attorney

CITY OF TUCSON:

Principal Assistant City Attorney

PIMA COUNTY REGIONAL FLOOD CONTROL DISTRICT:

Deputy County Attorney for the District

EXHIBIT A to Exhibit A to Resolution No. 22167

SANTA CRUZ RIVER
RILLITO RIVER TO VALENCIA ROAD

Santa Cruz River Park & Bank Protection Maintenance

BANK PROTECTION OWNER

- City of Tucson Bank Protection
- Pima County Bank Protection

LINEAR PARKS MAINTENANCE

- City of Tucson
- Pima County

FUTURE LINEAR PARKS

- Future Linear Parks
- Santa Cruz River

1 inch = 2,000 feet

Date: July 31, 2013

Santa Cruz River Park & Bank Protection Maintenance
BANK PROTECTION OWNER
City of Tucson Bank Protection
Pima County Bank Protection
LINEAR PARKS MAINTENANCE
City of Tucson
Pima County
FUTURE LINEAR PARKS
Future Linear Parks
Santa Cruz River
1 inch = 2,000 feet
2,000
1,000
0
2,000 Feet
Date: July 31, 2013
W EL CAMINO DEL CERRO
N SILVERBELL RD
E I10 EXIT 252 ON RAMP
E I10
W I10
W I10 FRONTAGE RD
N CASA GRANDE HY
N FREEWAY
N FLOWING WELLS RD
W SWEETWATER DR
W PRINCE RD
W GORET RD
W MIRACLE MILE

Santa Cruz River Park & Bank Protection Maintenance

BANK PROTECTION OWNER

- City of Tucson Bank Protection
- Pima County Bank Protection

LINEAR PARKS MAINTENANCE

- City of Tucson
- Pima County

FUTURE LINEAR PARKS

- Future linear Park
- Santa Cruz River

1 inch = 2,000 feet

FLOOD CONTROL

Date: July 31, 2013

Santa Cruz River Park & Bank Protection Maintenance

BANK PROTECTION OWNER

- City of Tucson Bank Protection
- Pima County Bank Protection

LINEAR PARKS MAINTENANCE

- City of Tucson
- Pima County

FUTURE LINEAR PARKS

- Future Linear Path
- Santa Cruz River

1 inch = 2,000 feet

2,000 1,000 0 2,000 Feet

Date: July 31, 2013

Santa Cruz River Park & Bank Protection Maintenance

BANK PROTECTION OWNER

- City of Tucson Bank Protection
- Pima County Bank Protection

LINEAR PARKS MAINTENANCE

- City of Tucson
- Pima County

FUTURE LINEAR PARKS

- Future Linear Parks
- Santa Cruz River

1 inch = 2,000 feet

2,000 1,000 0 2,000 Feet

Date: July 31, 2013

Santa Cruz River Park & Bank Protection Maintenance

BANK PROTECTION OWNER

- City of Tucson Bank Protection
- Pima County Bank Protection

LINEAR PARKS MAINTENANCE

- City of Tucson
- Pima County

FUTURE LINEAR PARKS

- Future Linear Parks

- Santa Cruz River

1 inch = 2,000 feet

Date July 31, 2013

EXHIBIT B to Exhibit A to Resolution No. 22167

PANTANO WASH
CRAYCROFT TO HARRION ROAD

Pantano
River Park &
Bank Protection
Maintenance
BANK PROTECTION OWNER
City of Tucson Bank Protection
Pima County Bank Protection
LINEAR PARKS MAINTENANCE
City of Tucson
Pima County
FUTURE LINEAR PARKS
Future Linear Parks
Pantano Wash
1 inch = 2,000 feet
Date: July 31, 2013
E RIVER RD
E CLOUD RD
N SABINO CANYON RD
E GRANT RD
N CRAYCROFT RD
N WILMOT RD
E TANQUE VERDE RD
N KOLB RD
E PIMA ST

Pantano River Park & Bank Protection Maintenance

BANK PROTECTION OWNER

- City of Tucson Bank Protection
- Pima County Bank Protection

LINEAR PARKS MAINTENANCE

- City of Tucson
- Pima County

FUTURE LINEAR PARKS

- Future Linear Parks
- Pantano Wash

1 inch = 2,000 feet

FLOOD CONTROL

Date: July 31, 2013

Pantano River Park & Bank Protection Maintenance

BANK PROTECTION OWNER

- City of Tucson Bank Protection
- Pima County Bank Protection

LINEAR PARKS MAINTENANCE

- City of Tucson
- Pima County

FUTURE LINEAR PARKS

- Future Linear Parks

- Pantano Wash

1 inch = 2,000 feet

2,000 1,000 0 2,000 Feet

Date: July 31, 2013

Pantano River Park & Bank Protection Maintenance

BANK PROTECTION OWNER

- City of Tucson Bank Protection
- Pima County Bank Protection

LINEAR PARKS MAINTENANCE

- City of Tucson
- Pima County

FUTURE LINEAR PARKS

- Future Linear Parks
- Pantano Wash

1 inch = 2,000 feet

2,000 1,000 0 2,000 Feet

Date: July 31, 2013

EXHIBIT C to Exhibit A to Resolution No. 22167

FIFTY FOOT TYPICAL RIVER PATH

FENCE OR BARRIER
12' MIN. VERTICAL CLEARANCE
12' MIN. VERTICAL CLEARANCE
EDGE, PROPERTY LINE OR BARRIER
3'
3'
3'
3'
4'
12'
PATH
2'
2'
TRAIL*
2'
VARIES
SETBACK
VARIES
SEPARATION
VARIES
SETBACK
50'
MINIMUM EASEMENT/CORRIDOR WIDTH
RIVER/DRAINAGE CORRIDOR
* - 8' TRAIL OR 3' SINGLETRACK TRAIL

EXHIBIT D to Exhibit A to Resolution No. 22167

ONE HUNDRED FOOT TYPICAL DIVIDED URBAN PATH

RIVER PARK CORRIDOR

CERTIFICATE OF CLERK
City of Tucson

State of Arizona
County of Pima } ss

I, Roger W. Randolph, the duly appointed and qualified City Clerk of the City of Tucson, Arizona, do hereby certify pursuant to Tucson Code § 2-102 that the following is a true and correct copy of Mayor and Council Resolution No. 22167, which was passed and adopted by the Mayor and Council of the City of Tucson, Arizona, at a meeting held on December 2, 2013, at which a quorum was present.

In Witness Whereof, *I have hereunto set my hand and affixed the seal of the City of Tucson, Arizona on December 9, 2013.*

Total of 2 pages certified.
(Exhibits not included)

City Clerk

ADOPTED BY THE
MAYOR AND COUNCIL

December 2, 2013

RESOLUTION NO. 22167

RELATING TO INTERGOVERNMENTAL AGREEMENTS; APPROVING AND AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN THE CITY OF TUCSON, PIMA COUNTY AND THE PIMA COUNTY REGIONAL FLOOD CONTROL DISTRICT ("DISTRICT") FOR MAINTENANCE OF MAJOR WATERCOURSES AND RIVER PARKS; AND DECLARING AN EMERGENCY.

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

SECTION 1. The IGA between the City of Tucson, Pima County, and Pima County Regional Flood Control District for the maintenance of major watercourses and river parks located along the Santa Cruz River from the Rillito River to Valencia Road; and the Pantano Wash from Craycroft Road to Harrison Road, attached hereto as Exhibit A, is hereby approved.

SECTION 2. The Mayor is hereby 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.

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, December 2, 2013.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

REVIEWED BY:

CITY MANAGER

DLD:mgs
11/15/13