



BOARD OF SUPERVISORS AGENDA ITEM REPORT
AWARDS / CONTRACTS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: March 15, 2022

* = Mandatory, information must be provided

or Procurement Director Award: ☐

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

City of Tucson

***Project Title/Description:**

Intergovernmental Agreement between Regional Flood Control District and City of Tucson for Development and Maintenance Responsibilities of Green Stormwater Infrastructure.

***Purpose:**

This item establishes a relationship between the Regional Flood Control District (District) and the City of Tucson (City) with respect to the design, construction, operation and maintenance of neighborhood-scale water harvesting basins and other green stormwater infrastructure including park amenities.

***Procurement Method:**

This Intergovernmental Agreement (IGA) is a non-procurement contract not subject to procurement rules.

***Program Goals/Predicted Outcomes:**

The District and the City agree that it is beneficial to coordinate the planning, construction and maintenance of green stormwater infrastructure when that infrastructure can be used to reduce flood risk, improve water quality, and create neighborhood park amenities. This IGA establishes basic expentations regarding responsibilities associated with this Infrastructure's placement on District lands as well as City lands.

***Public Benefit:**

The construction of neighborhood-scale green stormwater infrastructure reduces flood risks, improves water quality, and provides opportunities for neighborhood park amenities including planting trees and other vegetation. Collaborating with the City allows for increased opportunities in the placement of green stormwater infrastructure and to achieve these mutual goals.

***Metrics Available to Measure Performance:**

Number of new green stormwater infrastructure projects.

***Retroactive:**

No

TO: COB 2-16-2022 (2)
Vers.: 1
pgs.: 7

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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): 22*264
 Commencement Date: 03/15/2022 Termination Date: 03/14/2047 Prior Contract Number (Synergen/CMS): _____
☐ Expense Amount \$ 0.00 * ☐ Revenue Amount: \$ _____

***Funding Source(s) required:** Flood Control Tax Levy

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

Department: Regional Flood Control District

Telephone: (520) 724-4610

Department Director Signature: [Signature]

Date: 2/15/22

Deputy County Administrator Signature: [Signature]

Date: 2/15/2022

County Administrator Signature: [Signature]

Date: 2/15/2022

**Intergovernmental Agreement
between
Pima County Regional Flood Control District and City of Tucson
for
Development and Maintenance Responsibilities of
Green Stormwater Infrastructure**

This Intergovernmental Agreement (IGA) is entered into by and between Pima County Regional 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

- A. The District is authorized by A.R.S. § 48-3603(C)(3) to contract and join with a municipality, in acquiring, constructing, maintaining and operating flood control works.
- B. The District is authorized by A.R.S. § 48-3603(C)(9) to enter into intergovernmental agreements with other public agencies pursuant to title 11, chapter 7, article 3 to carry out the objects and purposes of the District.
- C. 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.
- D. The District and the City have agreed that there is a regional benefit to increasing the acreage of lands in the City of Tucson that contain Green Stormwater Infrastructure (GSI). These benefits may include additional greenspace and tree canopy, park amenities, capture and retention of pollutants, reduced urban heat island effects and flood risk reduction.
- E. In 2020, the City implemented a GSI fee to provide funding to catalog existing GSI in order to improve their operation and maintenance and construct additional GSI as part of other City capital improvements.
- F. Both Pima County and City are required to evaluate urban watersheds and identify GSI retrofits in order to reduce pollutant load contributions to protected waters in accordance with their respective Municipal Separate Storm Sewer (MS4) permits, issued by the Arizona Department of Environmental Quality. The District is responsible for constructing the retrofits under the County's MS4 permit.
- G. For the purpose of this agreement, GSI means landscaping features designed to capture and use stormwater runoff from hardscape to mitigate flooding and support healthy soil, vegetation, and biodiversity. GSI includes inlets and outlets/overflows as well as earthworks such as basins, berms, and swales to contain and direct the flow of water.

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

1. **Purpose.** The District and City will work collaboratively to leverage District tax revenue and City of Tucson funds in order maximize the number, size, and performance of future GSI projects on City-owned or District-owned property within the City that are large enough to reduce the risk of flooding or reduce pollutant loads at tributary watercourse confluences with regional watercourses ("**Joint GSI Projects**").

Participation in a Joint GSI Project will require the approval of the District Director and the City Manager or their designee regarding the scale and design of the project. The District Director, and City Manager or designee will maintain an agreed-upon list of City and District properties that are appropriate for the placement of Joint GSI Projects.

2. **Joint GSI Project Responsibilities.**

- a. *Design and Construction.* District will design and construct, with the City's input, each Joint GSI Project at the District's expense, including installation of landscaping and irrigation systems and initial establishment of landscaping, except that the City will, at its expense (1) design and construct any park amenities that are part of a Joint GSI Project; (2) coordinate with utility companies and relocate any utility infrastructure that is necessary for a Joint GSI Project; and (3) provide all water necessary for the initial establishment of landscaping.
- b. *Final Design Approval.* The City has final-approval authority for the design of Joint GSI Projects located on City-owned property and the District has final-approval authority for Joint GSI Projects located on District-owned property.
- c. *Right of Entry.* The party that owns the property on which a Joint GSI Project is being constructed will give the other party a right of entry to the property to complete any work that is the responsibility of that other party.
- d. *Maintenance.* The City will, at its expense, maintain all landscaping, irrigation systems, and park improvements that are installed as part of a Joint GSI Project.
- e. *Permitting.* The City will issue any necessary City permits to the District at no cost to the District. The City will furnish a reviewer to serve as a liaison for expedited City permitting, review, and coordination. This individual will ensure that all necessary City approvals are granted in a timely and collaborative manner.

3. **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.
4. **Financing:** Each Party will be responsible for financing its respective obligations.
5. **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.

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") 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.
7. **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:
 - a) Commercial General Liability in the amount of \$2,000,000.00 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.

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 established as provided by law.

8. **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.
9. **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.
10. **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.
11. **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.

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.** Notwithstanding any other provision in this IGA, this IGA may be terminated if for any reason the Pima County Regional 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.
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, will 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 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.
16. **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.
17. **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.
18. **Notice.** Any notice required or permitted to be given under this IGA must be in writing and 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) :

District:

Pima County Regional Flood
Control District
Attn: Director
201 N Stone Ave, 9th Floor
Tucson, Arizona 85701

City:

Parks and Recreation Department
Attn: Director
900 S Randolph Way
Tucson, Arizona 85716

With copies to:

County Administrator
130 West Congress St., 10th Floor
Tucson, Arizona 85701

Department of Transportation and Mobility
Attn: Director
201 N Stone Ave, 6th Floor
Tucson, Arizona 85701

With copy to:

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

Tucson Clerk's Office
255 W Alameda
Tucson, Arizona 85701

- 19. 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 City has caused this Intergovernmental Agreement to be executed by the Mayor upon resolution of the Mayor and Council and attested to by the City Clerk.

CITY OF TUSON:



Regina Romero, Mayor

ATTEST:



Roger Randolph, Clerk

Date: January 25, 2022

**PIMA COUNTY REGIONAL FLOOD
CONTROL DISTRICT:**

Sharon Bronson, Chair

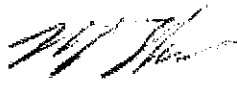
ATTEST:

Clerk of the Board

Intergovernmental Agreement Determination

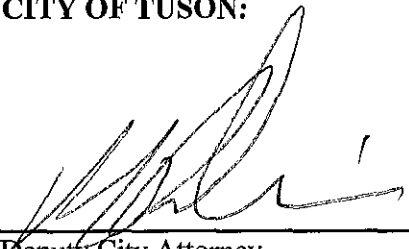
The foregoing Intergovernmental Agreement between Pima County Regional Flood Control District and the City has been reviewed by the undersigned, each of whom has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the party he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

**PIMA COUNTY
REGIONAL FLOOD CONTROL DISTRICT:**



Michael LeBlanc
Deputy County Attorney

CITY OF TUSON:



Deputy City Attorney