



Contract number: CTN. WW-14*020
Effective Date : 8-6-13
Term Date : 8-6-28
Cost : ✓
Revenue : ✓
Total : NTE:
Renewal By : Action 5-1-28
Term : 8-6-28
Reviewed by:

BOARD OF SUPERVISORS AGENDA ITEM SUMMARY

Requested Board Meeting Date: August 6, 2013

ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:

Right of Way (ROW) license IGA between the Town of Marana and Pima County. Replaces existing license agreements under contract 140813. The agreement establishes ROW terms in accordance with the Settlement IGA regarding wastewater services that was approved April 9, 2013.

CONTRACT NUMBER (If applicable): CTN #14*20

STAFF RECOMMENDATION(S):

RWRD staff recommends the approval of the ROW license IGA between the Town of Marana and Pima County.

Procure Dept 07/22/13 PM 03:56

CORPORATE HEADQUARTERS: _____

To: COB - 7-24-13
Agenda - 8-6-13
(2)

CLERK OF BOARD USE ONLY: BOS MTG. _____

ITEM NO. _____

PIMA COUNTY COST: N/A and/or REVENUE TO PIMA COUNTY:\$ None

FUNDING SOURCE: Enterprise Fund

(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: New ROW terms are established that are in accordance with the Settlement IGA that was approved April 9, 2013

IF DENIED: New ROW terms will not be established that are in accordance with the Settlement IGA that was approved April 9, 2013

DEPARTMENT NAME: Regional Wastewater Reclamation Department (RWRD)

CONTACT PERSON: Marla Berry TELEPHONE NO.: 724-6512

CONTRACT	
NO. <u>CTN-LW-17000000000000000000</u> 20	
AMENDMENT NO. _____	
This number must appear on all invoices, correspondence and documents pertaining to this contract.	

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE TOWN OF MARANA AND PIMA COUNTY FOR
PIMA COUNTY PUBLIC RIGHTS-OF-WAY**

THIS INTERGOVERNMENTAL AGREEMENT is entered into pursuant to Arizona Revised Statutes ("A.R.S.") Title 11, Chapter 7, Article 3, by and between the Town of Marana (the "Town"), a municipal corporation of the State of Arizona, and Pima County (the "County"), a body politic and corporate and a political subdivision of the State of Arizona.

WHEREAS, the County owns the public rights of way within Pima County, and has the statutory authority to regulate and manage said rights of way by virtue of A.R.S. section 11-251; and

WHEREAS, the Town, as authorized by A.R.S. section 9-240(B), owns, operates, and maintains water-utility and wastewater –utility facilities (collectively, the "Facilities") including waterworks such as wells, conduits, and pipelines, together with the necessary or usual appurtenances for the delivery of water and sewer pipes, manholes, and pump stations for the conveyance of wastewater, through the Town in, under, over, or through County streets; and

WHEREAS, the County and the Town have the right to enter into agreements and contracts with other public agencies to further their common interests pursuant to A.R.S. section 11-952;

NOW, THEREFORE, the Town and the County agree as follows:

Section 1. Grant of Permission. The Town hereby is authorized and empowered, on a non-exclusive basis, to use all public County rights of way now existing or hereafter established and lying within the unincorporated areas of Pima County, under the terms and conditions set forth herein, for the purpose of installing, repairing, replacing, and maintaining its Facilities.

Section 2. Term. This Agreement shall be effective for a term of fifteen (15) years from the Effective Date as defined in Section 25, below, and extinguishes, supersedes, and replaces all previous or existing franchises or licenses granted to the Town by the County.

Section 3. Regulation of County Rights of Way. All rights hereunder are granted under the express condition that the County shall have the power at any time to impose such restrictions and limitations upon, and to make such regulations as to, the Town's use of the County's rights of way as the County may be authorized by law to impose, including but not limited to the power to impose such restrictions, limitations, and regulations as the County is authorized to impose upon licensees or franchisees pursuant to state law.

Section 4. Superior Rights. The rights of the County in and to the use of all public rights of way

located within the unincorporated areas of Pima County are and forever shall be paramount and superior to the rights of the Town, subject only to this Agreement.

Section 5. Alteration of Public Rights of Way. Nothing in this Agreement shall be construed so as to prevent the County from altering, improving, adjusting, repairing, or maintaining its Facilities and public rights of way, and for that purpose to require the Town to adjust, remove, replace, or relocate the Town's facilities. Facilities of the County shall mean any physical object or improvement owned, possessed, made, installed, maintained, or constructed by the County or others at the request of the County, including all paving, highway, transportation, flood-control, and County-owned wastewater facilities located within County rights of way.

Section 6. Non-Exclusive Use. Nothing in this agreement shall be construed to grant the Town an exclusive right to use the public rights of way. The Town's Facilities shall be erected, adjusted, installed, replaced, removed, relocated, and maintained in a manner that will not interfere with the reasonable use of the public rights of way by the public, the County, or any other franchisee or licensee. The location of the Town's Facilities in the public rights of way shall not create or establish a vested interest in the rights of way, and its Facilities shall be removed or relocated by the Town whenever the County determines that the Town's Facilities impact, restrict, obstruct, or hinder the County or the public's existing or future use of the rights of way or the County's operation or location of County facilities.

Section 7. Relocation. The Town shall be solely responsible for the design, adjustment, removal, or relocation, temporarily or permanently, of all Town Facilities that impact, conflict with, or interfere with the County's use of its rights of way or the County's improvement, relocation, or adjustment of any facilities located in County rights of way. The cost of designing, adjusting, removing, relocating or replacing the Town's Facilities shall be the Town's sole responsibility, unless the Town has established prior rights with the County for the Facilities to be affected. Prior to beginning any activity in a County right of way, the Town shall obtain all required permits from the County and any other applicable jurisdiction for the activity. The Town's Facilities shall be adjusted, removed, replaced, or relocated by the Town in accordance with an activity schedule determined by the County and provided to the Town within a reasonable period of time prior to the scheduled activity start date. If the schedule is unacceptable to the Town or the Town finds it necessary to plead financial hardship regarding the cost of relocating its facilities, the Town may appeal to the Board of Supervisors. If the Town's Facilities are not adjusted, removed, replaced, or relocated within the time period allotted by the County's activity schedule, the County may, at its discretion, adjust or relocate the Town's facilities. The Town hereby agrees to be liable for all costs incurred by the County for the adjustment or relocation of the Town's Facilities necessitated by the County's activities, including overhead and maintenance costs and an administrative surcharge in the amount of fifteen (15) percent of the total cost attributed to the adjustment or relocation of the Town's facilities. In the event that the County incurs such costs, the County shall submit a bill to the Town for the incurred costs, and the Town shall pay the County the invoiced amount within ninety (90) calendar days of receipt of the invoice. If the invoice is not paid by the Town in a timely manner, all rights granted to the Town under this agreement shall be suspended and no permits will be issued to the Town for any work within County rights of way until the invoiced costs are paid in full to the County. The Town may contest the propriety of such invoices by filing a written appeal with the Board of Supervisors, whose decision with respect thereto shall be final.

Section 8. Undergrounding. The parties acknowledge that the County has the authority to require the Town to underground its above-ground Facilities in County rights of way when the County determines that such undergrounding is necessary' to conform to existing County Ordinances or is in the public interest. The County may require the Town to conduct a study of the cost of undergrounding any portion or segment of the Town's Facilities located in County rights of way. Any such study shall set forth an estimate of the costs of undergrounding the Town's facilities, including a breakdown of the cost allocated to labor, materials, design, and construction for converting above-ground Facilities to underground facilities. The Town shall submit a cost study of any specified segment of the Town's Facilities within ninety (90) calendar days after receiving written notice from the County requesting the cost study. The cost of preparing and providing any cost study requested by the County shall be borne by the Town.

Section 9. Scenic Routes. The installation of the Town's Facilities within any public rights of way designated by the Board of Supervisors as a scenic route must be constructed in accordance with the County's Scenic Routes Ordinance.

Section 10. Performance of Work. The work required by the Town to design, construct, reconstruct, pothole for, design, adjust, relocate, replace, or repair the Town's Facilities shall be the Town's sole responsibility. The cost of any delays to County projects caused by the Town's failure to complete its work in accordance with the County's activity schedule shall be the Town's sole responsibility, provided that the County shall have provided the Town with reasonable advance notice of the need to take such action and a reasonable amount of time allowed to perform the necessary activities. In the event the County incurs such costs, the County shall submit a bill to the Town for the incurred costs, and the Town shall pay the County the invoiced amount within ninety (90) calendar days of receipt of the invoice. If the invoice is not paid by the Town in a timely manner, all rights granted to the Town under this Agreement shall be suspended, and no permits will be issued to the Town for any work within County rights of way until the invoiced costs are paid in full to the County. The Town may contest the propriety of such costs by filing a written appeal with the Board of Supervisors, whose decision with respect thereto shall be final.

Section 11. Location of Facilities. As a condition of this Agreement, the Town hereby agrees to have and maintain precise, up-to-date maps of the Town's Facilities located in County rights of way, and to make this information available to the County within fifteen (15) calendar days of receiving a written request from the County. Beginning on the effective date of this Agreement, the Town shall maintain precise and verifiable horizontal and vertical location information tied to an accepted County datum and provide such information to the County within fifteen (15) calendar days of receiving written notice from the County. As a condition of the issuance of this Agreement, the Town agrees to provide surface location marking of the Town's undergrounded Facilities located within the public rights of way within two working days of a request from the County. In the event the Town is unable to provide the location information to the County within the allotted time frame, the County may, at its discretion, locate the Town's Facilities and the Town shall be liable for the County's costs incurred in locating the Town's Facilities.

Section 12. Work in Rights-of-Way.

12.1 *Damage to other facilities.* In the construction, adjustment, removal, relocation, repair, operation, and maintenance of its Facilities, the Town shall avoid causing or permitting any damage, disturbance, or unnecessary modification or alteration to County facilities including pavement, or to the facilities of others located in County rights of way. If the Town causes or permits any such damage, disturbance, or unnecessary alteration or modification, the Town, at its sole expense and in a manner approved by the County Engineer, shall restore the damaged, disturbed, altered, or modified facilities to the condition in which they existed before being damaged, disturbed, modified, or altered. The Town also shall be liable to owners of said facilities for any other losses or expenses that may accrue because of said damage, disturbance, modification, or alteration. The restoration of facilities shall be initiated promptly and completed expeditiously by the Town, who shall give priority to the restoration, repair, or replacement of such facilities over all non-emergency activities of the Town.

12.2 *Damage to vegetation.* In the construction, adjustment, removal, relocation, repair, operation, and maintenance of its Facilities, the Town shall use all necessary care to avoid any damage to or disturbance of existing vegetation in the public rights of way. If the Town causes or permits any such damage or disturbance, the Town shall re-vegetate the rights of way at its sole expense and in accordance with all County regulations then in effect.

12.3 *Adjacent properties.* The Town shall provide prior written notice to the owners or residents of adjoining properties of any activity of the Town which may temporarily interfere with access to or use of said adjoining property. The Town shall maintain access to adjoining properties during all construction activities or other operations, unless the requirement of access is waived in writing by the owners and residents of the affected properties. If an emergency requires activity without written notice, the Town shall use its best efforts to provide timely actual notice to the owner and residents of adjoining properties.

Section 13. Design and Location of Facilities.

13.1 *Injury to persons and property.* The Town shall use reasonable care at all times to avoid damage or injury to persons and property during the construction, adjustment, removal, relocation, repair, operation, and maintenance of the Town's Facilities.

13.2 *Location and construction of Facilities.* The location and construction of the Town's Facilities in public rights of way shall conform to County standards and guidelines then in effect and as may be directed by the County, in order not to interfere with a planned future use of the public rights of way by the County.

~~13.3 *Interference with other uses.* The Town's Facilities shall be located in a manner designed to cause the least amount of interference with the public's existing or future use of roads, streets, alleys, and other public rights of way, and in such a way as will minimize interference with the rights and convenience of adjacent property owners.~~

13.4 *Relocation of Facilities.* The County may require the Town, at the Town's sole expense, to remove, relocate, mitigate, or underground any of the Town's Facilities that present a potential hazard to the public, that interfere with the public's use of the public rights of way, or that are determined by the County to be aesthetically undesirable.

13.5 *Neighboring property owners.* The Town shall be responsible for notifying owners or residents of adjoining properties in writing about permanent or temporary above- or below-ground Facilities to be constructed in County rights of way. The Town shall make every reasonable effort to resolve the concerns of property owners and residents regarding the construction of the Town's Facilities. Should the County determine that the Town failed reasonably to evaluate all options available to alleviate residents' concerns, the County may require the Town to relocate its Facilities at the Town's sole expense.

13.6 *Excavation costs.* The Town shall be responsible for any costs that the County incurs in locating, excavating, or exposing any underground Town Facilities on County construction projects within County rights of way.

Section 14. Construction Safety. Any opening or obstruction in the public rights of way caused by the Town during the course of the Town's activities in the rights of way shall be guarded and protected at all times by safety barriers erected by the Town, which safety barriers shall be designated clearly by warning lights during periods of dusk and darkness. Any work performed by the Town in or adjacent to a public roadway open for travel shall be signed and marked properly by the Town with warning and directional devices in accordance with all applicable state and local traffic regulations, and in accordance with the Arizona Department of Transportation's Traffic Control Manual for Highway Construction and Maintenance.

Section 15. Drainage. During construction or excavation in the public rights of way, the Town shall provide proper drainage so that the public rights of way will be free from standing surface water and adequately drained so as not to cause flood or erosion damage to the facilities of the County or surrounding property. For projects with a material impact upon local drainage patterns, the Town may be required by the County to submit drainage-engineering data and design plans to the County for review and approval prior to the issuance of any Right-of-Way Use Permit by the County.

Section 16. Issuance of Permit not County Approval of Violation. The County's review, approval, or acceptance of plans or specifications or issuance of a permit for the installation, construction, or location of a facility by the Town shall not be construed to be an authorization for or approval of a violation of any federal, state, or local law or regulation, or of any industry standard, pertaining to the location or construction of a utility facility in public rights of way.

Section 17. County Inspection. The County, if it deems necessary, has the right to inspect any work by the Town in the public rights of way to ensure proper performance of the terms of this Agreement and conformance with any applicable federal, state, or local laws, ordinances, and regulations. The County may require the Town to pay a reasonable and uniform fee to cover the actual costs of inspections performed by the County or its contractor under this provision. The County may, at its discretion, pothole the Town's Facilities to verify conformance with Section 11,

above. The Town shall be liable for the cost of potholing, and for an administrative surcharge in the amount of fifteen (15) percent of the total cost of potholing, should the Town's Facilities be found to be out of conformance. The Town shall be responsible for taking corrective action to bring as-builts into conformance with verified Facilities.

Section 18. Abandonment of Facilities. Abandonment in place of any of the Town's Facilities located within County rights of way may occur only upon written approval from the County.

Section 19. Liability and Indemnity. The Town acknowledges its sole responsibility for any of its Facilities and/or equipment installed in the public rights of way, and for any liability arising from any activities the Town performs within the public rights of way. The Town agrees to indemnify, hold harmless, and defend the County and its officials, agents, servants, and employees against any and all claims for injuries to persons or damage to property, whether intentional, negligent, or otherwise, arising out of the Town's work in the public rights of way, or due to the existence of the Town's Facilities and/or equipment in the public rights-of-way, or in any way related to the Town's exercise of its rights under this Agreement. Neither the issuance of a County permit for installation or location of a facility or equipment, nor County approval of such installation or location, nor the failure of the County to direct the Town to take any precautions, to make any changes, or to refrain from doing anything shall excuse the Town of its responsibilities hereunder to the County or others in the case of any injury to persons or damage to property.

If the County is sued in any court by any person, firm, association, or corporation to recover damages for injuries to person or property on account of the installation, repair, operation, and/or maintenance of the Town's Facilities or equipment, the Town shall defend all such suits and pay any resulting judgments, and shall, at the option of the County, be made a party to any such court proceeding.

Section 20. County Participation In Legal Actions. The County shall have the right at all times to take part in any suit or action instituted by or against the Town in which any judgment or decree can be rendered, which might result in the foreclosure of any lien on any Town property situated within public rights of way, or which could affect the rights, powers, or duties of the Town to do or not to do anything that this Agreement might require the Town to do or not to do, and also to take such steps as the County may deem appropriate to protect the interests of County or the public. The County shall have the right to intervene in any suit, action, or proceeding by any person or persons, firm, or corporation seeking to enjoin, restrain, or in any manner interfere with the Town in the performance or observance by it of any of the terms or conditions of this Agreement, or of any regulation, notice, or direction of the County in such connection, or which involves or might involve the constitutionality, validity, or enforcement of this Agreement. The County also may move for dissolution of any such injunction or restraining order or take any other appropriate step, in any such suit, action, or proceeding that it may deem necessary or advisable in order to protect its interests.

Section 21. Compliance with Agreement Conditions and Ordinances. The Town agrees to conform to, abide by, and perform all the conditions, provisions, requirements, and limitations in this Agreement. The Town shall be subject to all County ordinances now in force or hereafter lawfully adopted, including all ordinances relating to the use of public rights of way by utilities.

The Town agrees that it will not assert any claim against the County that the provisions of this Agreement or any applicable County ordinance or regulation in force at the time of execution of this Agreement are unreasonable, arbitrary, or void.

Section 22. Non-Exclusive License. This License and the privileges granted herein shall not be exclusive. The Board of Supervisors expressly reserves the right to grant, at any time, similar franchises, licenses, and privileges over the same highways, roads, streets, alleys, and thoroughfares, or any thereof, to any other person, firm, or corporation.

Section 23. Assignment. The Town hereby agrees that neither this Agreement nor any of the Town's Facilities in County rights of way shall be sold, assigned, or transferred without the prior written approval of the Pima County Board of Supervisors. The decision to approve or deny the sale, assignment, or transfer of this Agreement shall be within the sole discretion of the Board of Supervisors, and the Board may deny the Town's request to sell, assign, or transfer the Agreement if such denial is in the best interests of the County.

Section 24. Contact Information. All notices or correspondence concerning this Agreement shall be provided in writing to:

If to County:

Pima County Real Property Services
201 North Stone, 6th Floor
Tucson, Arizona 85701
(520) 740-6313

If to Town:

John Kmiec, Utilities Director
Town of Marana Utilities Department
5100 West Ina Road
Tucson, AZ 85743
(520) 382-2570

Any change in any of the foregoing contact information for either party shall be made in writing to the other party.

Section 25. Effective Date. This Agreement shall be effective upon the filing of the original hereof with the Office of the Pima County Recorder. This Agreement shall expire on the fifteenth anniversary thereof, unless sooner terminated by either party hereto.

Section 26. Termination. This Agreement may be terminated by either the Town or the County upon 180 days' written notice.

Section 27. 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.

Section 28. A.R.S. § 38-511. This Agreement is subject to the provisions of A.R.S. § 38-511.

IN WITNESS WHEREOF, County has caused this Agreement to be executed by the Chair of its Board of Supervisors and attested to by the Clerk of the Board, and the Town has caused this

Agreement to be executed by the Mayor upon resolution of the Mayor and Council and attested to by its Clerk.

Town of Marana, Arizona
Town Council

Pima County Arizona
Board of Supervisors

Ed Honea, Mayor

Date: _____

Chairman

Date: _____

Attest:

Attest:

Jocelyn Bronson, CMC, Town Clerk

Date: _____

Clerk of the Board

Date: _____

The forgoing Intergovernmental Agreement between Pima County and the Town of Marana 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 Intergovernmental Agreement represented by the undersigned.

Town of Marana:

Pima County:

Town Attorney


Deputy County Attorney