



Contract Number: CT. PR. 13 * 853
Effective Date: 7-2-13
Term Date: 6-30-38
Cost: /
Revenue: /
Total: / NTE: /
Action: 4-1-38
Renewal By: /
Term: 6-30-38
Reviewed by: /

BOARD OF SUPERVISORS AGENDA ITEM SUMMARY

Requested Board Meeting Date: July 2, 2013

ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:

The purpose of this IGA is to provide for the cooperative maintenance and operation by District and County of the swimming pool facility at the Flowing Wells Junior High School.

CONTRACT NUMBER (If applicable): CT 13*853

STAFF RECOMMENDATION(S):

Staff respectfully requests approval of this IGA.

CORPORATE HEADQUARTERS: NRPR

JUN 21 13 PM 03:55 POC QX OF 80

Procure Dept 06/21/13 PM 02:33

To: CHH - 6-21-13
COB - 6-27-13
Agenda 7-2-13
(3) Addendum

CLERK OF BOARD USE ONLY: BOS MTG. _July 2, 2013

ITEM NO. _____

PIMA COUNTY COST: ____ **and/or REVENUE TO PIMA COUNTY:\$**

FUNDING SOURCE(S): _____

(i.e. General Fund, State Grant Fund, Federal Fund, Stadium D. Fund, etc.)

Advertised Public Hearing:

		YES	X	NO
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Board of Supervisors District:

1		2		3		4		5		All	xxx
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IMPACT:

IF APPROVED:

The Intergovernmental Agreement for the Maintenance and Operation of Flowing Wells Junior High School Swimming Pool will be approved.

IF DENIED:

The IGA will be denied.

DEPARTMENT NAME: Natural Resources, Parks and Recreation

CONTACT PERSON: Evelyne Thorpe **TELEPHONE NO.:** 877-6230

**Intergovernmental Agreement
between
Pima County and Flowing Wells School District
for**

Maintenance and Operation of Flowing Wells Junior High School Swimming Pool

This Intergovernmental Agreement (IGA) is entered into by and between Pima County, a body politic and corporate of the State of Arizona ("County") and Flowing Wells School District ("District") pursuant to A.R.S. § 11-952.

Recitals

- A. County and District 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. County is authorized by A.R.S. § 15-364(B) to expend public monies and enter into agreements with District for the cooperative maintenance and operation of a joint use community and school swimming facility on District-owned property.
- C. District is authorized by A.R.S. § 15-363 to operate school buildings and grounds for the purpose of providing public recreational activities.
- D. County and District desire to provide for the joint maintenance and operation of the swimming pool facility at Flowing Wells Junior High School.
- E. County and District have previously entered into an Intergovernmental Agreement for recreational activities in February, 1996 which has been largely superseded and the parties wish to replace the provisions of that Intergovernmental Agreement with this Agreement.

NOW, THEREFORE, County and District, in consideration of the above recitals and the matters and things hereinafter set forth, agree as follows:

Agreement

Purpose.

The purpose of this IGA is to provide for the cooperative maintenance and operation by District and County of the swimming pool facility at Flowing Wells Junior High School (the "Pool").

Scope.

A. Responsibilities of the District

District is responsible for the payment of all routine and extraordinary maintenance, upkeep and utility costs associated with operation of the Pool, including but not limited to:

1. Providing and storing all necessary chemicals incidental to operation of the Pool.
2. Providing and maintaining portable lifeguard stands, ADA disabled pool lift (if installed), thermal tarp reels and covers, lane lines, lane line reels, and diving boards.
3. Maintaining vegetation and landscape at the Pool site and providing sanitation supplies for the bathroom facilities at the Pool.
4. Except during the summer schedule of each calendar year, maintaining the cleaning of the guard office, bathrooms and inner facility. District is responsible for such cleaning on any school days between the above listed dates.
5. Providing any other required maintenance and upkeep to ensure that the Pool remains in safe and usable condition.
6. Maintaining a master schedule of use of the Pool on a year round basis.

B. Responsibilities of the County

1. County will schedule and coordinate public events at the Pool for the community during the summer schedule of each calendar year as follows:
 - i. County will provide programming Memorial Day weekend through Labor Day weekend until District resumes the school year calendar. At that time County will provide programming on weekends through Labor Day.
 - ii. County will provide programming Monday-Thursday 9:00AM-5:30PM and Saturdays and Sundays 12:00PM-7:00PM. County will also schedule swim meets on Saturdays during the summer. Swim meet dates will be provided to the District upon request.
 - iii. District is permitted to schedule other recreational activities at the Pool during times not specifically listed by the County, or any time period in which there is no County-sponsored activity. County will be permitted to schedule other recreational activities at the Pool during any time period in which there is no District-sponsored activity.
2. Scheduling during the non-summer schedule will proceed as follows:
 - i. District will schedule recreation activities during the remainder of the year not identified in the Summer Schedule. Upon approval of the District, County will be permitted to schedule other recreation activities (such as public lifeguarding classes) at the Pool during any time that there is no District-sponsored activity. Heating the pool will only be available if the District was already heating the pool for a District sponsored activity (County will not be billed by District for the pool being heated).
 - ii. The Pima County NRPR Director and the District Superintendent may mutually agree to change the summer and non-summer schedule of the

Pool. Such agreement shall be made in writing and shall take into account community needs.

3. County will operate the pump room equipment at the Pool, including system circulation, backwashing, preserving the heater set point, monitoring chemical controllers, and adding chemicals to the Pool. County will inform District of any equipment failure.
4. County will clean the pool. County shall maintain cleaning of guard office, bathrooms and inner facility during the summer schedule
5. County will provide District with a twenty five (25) year life cycle plan for the Pool. The life cycle plan will be updated annually to reflect changing conditions of the Pool and the pump room.
6. County will maintain the cleaning of the guard office, bathrooms and inner facility during the summer schedule of each calendar year, except on District school days that fall during this period.
7. County will acquire and maintain any required annual swimming pool permits from the Pima County Health Department.
8. County will provide, maintain, repair and replace when necessary the following lifeguard safety equipment: backboards, rescue tubes, ring buoys, shepherd's crook, and first aid kits.
9. County will maintain the pool vacuum and provide gas.

1. Operation of Pool. The Pool will be operated as a public swimming pool pursuant to Chapter 8.32 of the Pima County Code, which governs all activities pursuant to this Agreement. Pursuant to that chapter, a minimum of two (2) lifeguards are required in order to open and operate the Pool. There will be one (1) additional lifeguard for every twenty-five (25) swimmers or portion thereof in excess of fifty (50) swimmers. Lifeguards will be in constant attendance at the Pool during swimming hours. No swimmers will be permitted in the Pool area unless the required lifeguards are present.

If third party swimmers are present, one (1) of the required lifeguards must be in a lifeguard stand at all times when any swimmers are in the Pool.

During hours of operation, any party using the Pool shall test the water hourly to ensure that pool chemistry is within the required parameters set by Chapter 8.32 of the Pima County Code. County shall provide water quality testing equipment and reagents.

2. Financing. Each party is responsible for financing any actions required to be taken by that party under this IGA.

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

4. **Disposal of Property.** Upon the termination of this IGA, all property involved will revert to its 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.

5. **Indemnification.** Each party (as Indemnitor) indemnifies, defends and holds 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, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers. Nothing in this section indemnifies an Indemnitee from the Indemnitee's own negligence.

6. **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 \$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 IGA 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 IGA 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.

Parties to this agreement shall provide thirty (30) days written notice to all parties to this IGA 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 (for District, § 15-382) or participation in an insurance risk pool under A.R.S. § 11.952.01 (for District, § 15-382), at no less than the minimum coverage levels set forth in this section.

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

8. **Non-Discrimination.** The parties will 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 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, as if set forth in full herein.

9. **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.

10. **Severability.** If any provision of this IGA or any application thereof to the parties or any person or circumstances, is held invalid, such invalidity will 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 severable.

11. **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.

12. **Non-Appropriation.** Notwithstanding any other provision in this IGA, this IGA may be terminated if for any reason the Pima County Board of Supervisors or the Flowing Wells School District Board does not appropriate sufficient monies for the purpose of maintaining this IGA. In the event of such cancellation, the parties will have no further obligation to each other except for payment for services rendered prior to cancellation.

13. **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.

14. **Worker's Compensation.** Each party will comply with the notice requirement 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.

15. **No Joint Venture.** Nothing in this IGA creates any partnership, joint venture or employment relationship between the parties or creates any employer-employee relationship between County and any District employees, or between District 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.

16. **No Third Party Beneficiaries.** Nothing in this IGA creates duties or obligations to or rights in third parties not parties to this IGA or affects 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.

17. **Notice.** Any notice required or permitted to be given under this IGA will be in writing and will 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):

County: Director, Natural Resources Parks and Recreation 3500W. River Road Tucson, Arizona 85741	District: Supt, Flowing Wells School District 1556 W. Prince Road Tucson, AZ 85705
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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

18. **Legal Arizona Workers Act Compliance.**

The parties hereby warrant that they will at all times during the term of this IGA comply with all federal immigration laws applicable to each party's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "***State and Federal Immigration Laws***"). Each party shall further ensure that each subcontractor who performs any work for that party under this IGA likewise complies with the State and Federal Immigration Laws.

Each party shall have the right at any time to inspect the books and records of the other party and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

- a. Any breach of a party's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this IGA subjecting that party to penalties up to and including suspension or termination of this IGA. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, the contracting party shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, (subject to County approval if MWBE preferences apply) as soon as possible so as not to delay project completion.

- b. Each party shall advise each subcontractor of the other party's rights, and the subcontractor's obligations, under this Section by including a provision in each subcontract substantially in the following form:

"Subcontractor hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that either party to the IGA may inspect the subcontractor's books and records to insure that subcontractor is in compliance with these requirements. Any breach of this paragraph by subcontractor will be deemed to be a material breach of this Agreement subjecting subcontractor to penalties up to and including suspension or termination of this Agreement."

- c. Any additional costs attributable directly or indirectly to remedial action under this Section shall be the responsibility of the party whose actions caused the remedial action to be necessary. In the event that remedial action under this Section results in delay to one or more tasks on the critical path of either party's approved construction or critical milestones schedule, such period of delay shall be deemed excusable delay for which that party shall be entitled to an extension of time, but not costs.

19. Entire Agreement. This IGA 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 may not be modified, amended, altered or extended except through a written amendment signed by the parties.

20. Cancellation of Prior Agreement. That certain Intergovernmental Agreement entered into on January 9th, 1996 between County and District for the joint provision of public recreation is hereby cancelled and is of no further force or effect.

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In Witness Whereof, County has caused this Intergovernmental Agreement to be executed by the Chairman of its Board of Supervisors, upon resolution of the Board and attested to by the Clerk of the Board, and District has caused this Intergovernmental Agreement to be executed by the President upon resolution of the Governing Board and attested to by:

PIMA COUNTY:

FLOWING WELLS SCHOOL DISTRICT

Chairman
Board of Supervisors

Superintendent

ATTEST:

ATTEST:

Jenetta Douglas
Clerk of the Board

APPROVE AS TO CONTENT:

Rafael Payan, Ph.D. Director
Natural Resources, Parks and Recreation

04.23.2013

Approval

The foregoing Intergovernmental Agreement between Pima County and Flowing Wells School District has been reviewed by the undersigned, and is hereby approved as to content.

Intergovernmental Agreement Determination

The foregoing Intergovernmental Agreement between Pima County and the Flowing Wells School District 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.

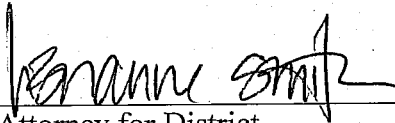
PIMA COUNTY:

FLOWING WELLS SCHOOL DISTRICT



TOBIN ROSEN

Deputy County Attorney



Attorney for District