



BOARD OF SUPERVISORS AGENDA ITEM REPORT AWARDS / CONTRACTS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: August 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 Use and Maintenance Responsibilities In and Adjacent to the Regional Watercourses.

***Purpose:**

The Regional Flood Control District (District), via a previous Intergovernmental Agreement (IGA), has acquired all of the City of Tucson's (City) landholdings within and immediately adjacent to the regional watercourses and The Chuck Huckelberry Loop. The City still retains ownership and maintenance responsibility of City parks adjacent to these watercourses, and discharges of effluent and TARP water into the Santa Cruz River. This item establishes conditions and operations and maintenance expectations regarding these uses.

***Procurement Method:**

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

***Program Goals/Predicted Outcomes:**

By establishing clear conditions and expectations regarding the City's uses within and adjacent to the regional watercourses, the goal is to create a common understanding of the role of each jurisdiction. This will reduce uncertainty and increase the timeliness of any operation and maintenance needs that are identified during the term of the IGA.

***Public Benefit:**

A clear set of expectations for each jurisdiction facilitates faster response times for jurisdictional action to operations and maintenance needs, allows for a jurisdiction to plan for large maintenance projects, and results in swifter and more accurate responses when engaging the public with questions about the watercourses, Loop, and parks maintenance responsibility.

***Metrics Available to Measure Performance:**

Responsiveness to requests for maintenance by each jurisdiction

***Retroactive:**

No

TO: COB 7-27-22 (3)

VERS: 1

PGS: 9

JUL26'22 PM0349 PD

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): 23*040
Commencement Date: 08/15/2022 Termination Date: 08/14/2047 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 **Error! Not a valid embedded object.** 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: Regional Flood Control District

Telephone: (520) 724-4610

Department Director Signature: [Signature]

Date: 7/26/22

Deputy County Administrator Signature: [Signature]

Date: 7/26/2022

County Administrator Signature: [Signature]

Date: 7/26/2022

**Intergovernmental Agreement
between
Pima County Regional Flood Control District and City of Tucson
for
Use and Maintenance Responsibilities In and
Adjacent to the Regional Watercourses**

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 Pima County Regional Flood Control District ("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 of Tucson ("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. The District and the City have agreed that the District should be responsible for operations and maintenance of the Santa Cruz River, Rillito River, and Pantano Wash and have completed an Intergovernmental Agreement entitled "*Intergovernmental Agreement between the City of Tucson and Pima County Regional Flood Control District for the Conveyance of Lands for Flood Control Management Purposes*" that conveys to the District fee title to all portions of these watercourses that were owned by the City, including portions of the overbank and Loop facilities.
- IV. The District and the City have agreed that the District should be responsible for operation and maintenance of the Loop river park and have completed Intergovernmental Agreements establishing such responsibility, including IGAs for the Julian Wash Greenway from Santa Cruz River to Rita Road, and Harrison Greenway from Pantano Wash at Sellarole to the Julian Wash.
- V. District and City agree to terminate the Intergovernmental Agreement between Pima County ("County"), District, and City for Maintenance of Major Watercourses and River Parks (executed on January 7, 2014, Pima County Contract No. CT-FC-14-237 and City of Tucson Contract No. 17885) to reflect the change in ownership of the major watercourses.
- VI. District and City agree that certain City uses in and adjacent to the regional watercourses will occur and desire an IGA to establish conditions and expectations regarding such uses.

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 impact to the Loop and regional watercourse operations from City activities and uses on adjacent City land. City activities include discharge of water into the Santa Cruz River for recreational, recharge, or environmental purposes, approval of events at adjacent City parks that may impact the Loop, and coordination of utility maintenance for City utilities that may impact District lands. Adjacent uses include confirming locations and amenities where the City will remain responsible for maintenance and improvements.
- B. Scope.** The scope of this IGA includes the following, organized by watercourse:
- 1. General Conditions for All Watercourses:**
 - a. City agrees to notify the District of all activities that will impact District lands and facilities and, if necessary, apply for a Facility Impact Permit.
 - b. City agrees to notify the District and Pima County Parks and Recreation Department of all activities on City lands that will impact the Loop and associated facilities, including third party activities on adjacent City parks.
 - c. District agrees to notify the City of all activities that will impact adjacent City lands or utilities.
 - d. The District and the City agree to work collaboratively to address issues caused by unauthorized camping and lodging in adjacent City and District property and the prevention and removal of trash and debris in the regional watercourses and the immediate tributary watercourses and storm drains.
 - 2. Santa Cruz River:**
 - a. **Exceptions:** With the following intentional exceptions, the City has attempted to completely transfer fee title to all its properties within Santa Cruz River and adjacent linear park. Upon discovery by either party, the City agrees to transfer any remaining relevant portions of any parcels that contain the watercourse or existing Loop river park. The exceptions, which will remain City maintenance responsibilities, are:
 - i. The Garden of Gethemane at 670 West Congress and adjacent park improvements between Congress and Alameda at 660 West Alameda (aka Bonita Park);
 - ii. Plaza at 1 North Freeway, which is owned by the State of Arizona;

iii. Ryland Landfill; and

iv. A-Mountain Landfill.

b. Discharges of Water: The City and District agree that the discharge of water into the river, specifically Heritage Project and Tucson Airport Remediation Project (TARP) water, is acceptable subject to the following conditions. City and District agree that:

- i. The boundaries of the TARP reach are recognized to extend from the TARP Outfall at 1102 W Irvington Road to the Heritage Outfall at 1580 South Santa Cruz Lane. The boundaries of the Heritage Project reach are recognized to extend from the Heritage Project Outfall to Congress Street. In years where non-flood Heritage Project flows extend beyond Congress for more than 30 days total, as measured by the Congress Street flow gauge, the City's responsibilities for this reach will extend to St Mary's Road.
- ii. The City or its designated partners or contractors shall inspect and remove invasive plant and animal species as-needed (based on observations or complaints), but at a minimum once per year and submit an annual post-monsoon inspection and invasive plant removal summary report from the boundaries of the Heritage Project and the boundaries of the TARP reach. The City's responsibility to inspect and remove invasive plant and animal species, pursuant to this Section B(2)(b)(ii), to remove trees under Section B(2)(b)(iii), and to correct channel flow away from the bank protection under Section B(2)(b)(vi), between the TARP Outfall and the Heritage Outfall will last for one (1) year following cessation of discharge from the TARP Outfall. City agrees to provide notice under Section R, below, if the TARP flows from the outfall have ceased for one year.
- iii. Within the Heritage Project reach and the TARP reach the City or its designated partners or contractors shall inspect and remove all non-native trees and new native trees with trunks exceeding 6 inches in diameter due to risk of obstruction during flooding. The City will inspect, maintain, and report annual results. District will provide the City with a map or other similar information to indicate baseline conditions on the Santa Cruz River for existing native trees with trunks exceeding 6" diameter (19" circumference) at breast height (DBH, or 4.5' above the ground). District will be responsible for removal of any pre-identified or "baseline conditions" native trees. In the absence of such information, or if incomplete baseline information is submitted, Tucson will remove unidentified native trees between 6" DBH (19" circumference) and 7" DBH (22" circumference) and Pima County will be responsible for removal of unidentified native trees in excess of 7" DBH.
- iv. The City recognizes that a failure to perform the maintenance required in paragraphs ii, iii, and vi of this section may result in the District submitting a Letter of Map Revision ("LOMR") to FEMA to modify floodplain. District agrees to consult with the City at least ninety (90) days prior to submitting a

LOMR to allow City to perform the required maintenance and agrees not to submit a Letter of Map Revision to FEMA based on native trees with trunks in excess of 7" DBH, which are the District's responsibility to remove.

- v. The City or its designated partners or contractors may seed the reaches with native grass and shrub seeds with a seed mix approved by the District.
- vi. If low-flow channel contacts bank protection outside of the planned District maintenance, the City agrees to modify/relocate the channel away from bank protection upon, but no later than 30 days following the District's request. District agrees to allow City to modify or "notch" existing grade control structures in order to comply with any such District request, or to operate and measure water flow in the TARP and Heritage Project reaches. City shall obtain a Facility Impact Permit from the District prior to any modification of the grade control.
- vii. The City and District agree to collaborate on implementing and maintaining in-channel improvements to enhance infiltration and reduce frequency of maintenance (e.g., notches in grade control structures, rock fords, etc.) The City and its designated partners or contractors are not responsible for expenses to remove fill.
- viii. The District agrees that when regional watercourse maintenance is required, District shall modify or locate the channel to avoid bank protection and form some sinuosity.
- ix. The City shall provide notification to the District, per Section R, below, of any exceedance of a federal or state water quality standard or maximum contaminant level, or permitted discharge requirement. In addition, the City will inform the District, per Section R, below, of any exceedance of the City's voluntary operational target of 18 parts per trillion (ppt) of total concentration of PFAS, PFOA, PFHxS, and PFHpA for discharge from the TARP AOP treatment plant to the Santa Cruz River. This notification can occur monthly.
- c. **Cushing Street Area and Floodwall:** The City and District agree that the portion of the Santa Cruz River upstream of Cushing Street contains a non-compliant floodwall on the east overbank that was identified as deficient during the Cushing Street Bridge Letter of Map Revision process. The City is responsible for obtaining the Letter of Map Revision from the Federal Emergency Management Agency. The City and District also agree that by accepting ownership of the river, the District does not become responsible for mitigation of the deficiencies in the floodwall. Likewise, City and District agree that this IGA does not burden the City with any additional responsibility to mitigate the deficiencies in the floodwall that was not the City's responsibility prior to this IGA's effective date.

3. Rillito River:

- a. **Exceptions:** With the following intentional exceptions, the City has attempted to transfer fee title to all its properties within Rillito River and adjacent linear park.

Upon discovery by either party, the City agrees to transfer any remaining relevant portions of any parcels that contain watercourse or existing Loop river park. The exceptions, which will remain City maintenance responsibilities, are Rio Vista Natural Resource Park and associated amenities.

4. Pantano Wash:

- a. **Exceptions:** With the following intentional exceptions, the City has attempted to transfer fee title to all its properties within Pantano Wash and adjacent linear park. Upon discovery by either party, the City agrees to transfer any remaining relevant portions of any parcels that contain watercourse or existing Loop river park. The exceptions, which will remain City maintenance responsibilities, are:
 - i. Fort Lowell Park,
 - ii. Stefan Gollob Park, and
 - iii. Michael Perry Park, including Children's Memorial Garden.

- C. **Financing.** Each party is responsible for financing its respective obligations.
- 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.** 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
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

With copies to:

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

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

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

ATTEST:



Suzanne Mesich, City Clerk

**PIMA COUNTY REGIONAL FLOOD
CONTROL DISTRICT:**

ATTEST:

Chair
Board of Directors

Clerk of the Board

APPROVED AS TO CONTENT:



Intergovernmental Agreement Determination

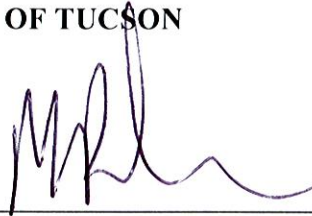
The foregoing Intergovernmental Agreement between Pima County Flood Control District and the City of Tucson has been reviewed by the undersigned, each of whom has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the party he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

**PIMA COUNTY
FLOOD CONTROL DISTRICT:**



Michael LeBlanc
Deputy County Attorney

CITY OF TUCSON



~~Principal Assistant City Attorney~~