



BOARD OF SUPERVISORS AGENDA ITEM REPORT **CONTRACTS / AWARDS / GRANTS**

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: October 2, 2018

*** = Mandatory, information must be provided**

or Procurement Director Award ☐

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

Arizona Board of Regents, on behalf of the University of Arizona (U of A)

***Project Title/Description:**

Flood Control Project Services and Related Research, Education, and Employment - Intergovernmental Agreement (IGA)

***Purpose:**

Enables the Pima County Regional Flood Control District (District) to establish a formal program with the U of A to provide and perform research and/or flood and drainage engineering services to the District utilizing staff, student interns, graduate students, or a third party on a case by case basis.

***Procurement Method:**

By Task Order as set forth in this IGA.

***Program Goals/Predicted Outcomes:**

The goal of this IGA is to establish a more organized and systematic program to utilize the U of A student interns, graduate students, staff and faculty by providing them with the opportunity to participate in and help perform real world flood and drainage engineering project services, such as flood capacity, design, project management, hydrologic assessment, evaluation of floodplain function, and administrative projects for the District. This will in turn improve public safety, while benefiting the U of A and the District.

The predicted outcomes of this program will include, but not be limited to:

*Better utilization of combined public resources in education and floodplain management to improve public safety and floodplain function.

*Mentoring and leadership that students will receive from District staff.

*Recruiting of graduate scientists and engineers to the District.

*Improved knowledge base of District scientists and engineers by collaborating with U of A staff, faculty and students.

*Exposure of science and engineering students to floodplain management and drainage careers.

***Public Benefit:**

Allows important floodplain management and drainage engineering work to be done in a collaborative manner with the U of A's engineering and science capacities. This in turn helps achieve a meaningful return by leveraging both public works and education to improve the management of floodplains and flood control infrastructure in Pima County. It also provides opportunities for engineering and science faculty, staff and students to gain educational and work experience in direct service to the public. This in turn allows for a fully trained and educated public works task force.

***Metrics Available to Measure Performance:**

1.) Projects completed and documented in reports; 2.) Students and interns successfully employed and trained; and 3) Conference or industry group presentations.

***Retroactive:**

No.

Contract / Award InformationDocument Type: CT Department Code: FC Contract Number (i.e., 15-123): 19*154Effective Date: 10/02/2018 Termination Date: 10/02/2023 Prior Contract Number (Synergen/CMS): _____☒ **Expense Amount: \$*** Not to exceed \$750,000 ☐ Revenue Amount: \$ _____***Funding Source(s) required:** Funding will be primarily from Flood Control Tax Levy, though other sources such as grant funding or mitigation funds may be used should the possibility arise.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 22-73.***Amendment / Revised Award Information**

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____

Amendment No.: _____ AMS Version No.: _____

Effective Date: _____ New Termination Date: _____

Prior Contract No. (Synergen/CMS): _____

☐ Expense or ☐ 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): _____

Effective 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: Evan Canfield - Civil Engineering ManagerDepartment: Regional Flood Control DistrictTelephone: 724-4636Department Director Signature/Date: Sharon S. Sheld 8-5-18Deputy County Administrator Signature/Date: [Signature] 9/10/18County Administrator Signature/Date: C. Dutel 9/10/18
(Required for Board Agenda/Addendum Items)

Contract No: CT-FC-19-157 Amendment No: _____

This number must appear on all correspondence and documents pertaining to this contract

**Intergovernmental Agreement
between the
Pima County Regional Flood Control District
and the
Arizona Board of Regents, University of Arizona
for
Project Services and Related Research, Education, and Employment**

This Intergovernmental Agreement ("IGA") is entered into pursuant to Arizona Revised Statutes A.R.S. § 11-952, by and between the Pima County Regional Flood Control District, a special taxing district under Arizona Revised Statutes Title 48, ("District") and the Arizona Board of Regents, on behalf of the University of Arizona, a land-grant public/state controlled institution of higher education and body corporate under Arizona Revised Statutes § 15-1601 et. seq. ("University"). This Agreement sets forth the terms for University faculty, professionals, and students from various colleges, schools, departments, and centers throughout the University to participate in District projects and perform project-related services, conduct research, or participate in education and employment experiences.

Recitals

- A. The District and the University may contract for services and enter into agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-952.
- B. The University has qualified faculty, and other professional personnel ("Qualified Personnel") and students ("Students") who are familiar, are becoming familiar, or are in the need to become familiar with public works design, construction, materials, processes, maintenance, operations, and related research.
- C. The University wishes to make its Qualified Personnel and Students available to the District on an as needed basis to address or help address the District's needs through specific projects or related research, education, and employment opportunities.
- D. The District recognizes the importance of allowing Students the opportunity to gain public works design and construction experience as a part of their learning experience.
- E. The District recognizes the importance that University project services and related research can offer to improve processes and approaches that save resources or improve the allocation of resources.
- F. The District acknowledges the University's vital role in providing well educated and degreed Students to the District, State and Nation. The District recognizes that its greatest opportunity to enabling access to this source, either as direct employees, employees for other agencies,

or employment through private firms, is to collaborate with the University, including through IGAs like this.

Agreement

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

1. Definitions.

- a. Project: any District project involving design, construction, maintenance, operations, or research.
- b. Project Services: The design, project management, materials testing, and research services related to the design, construction, maintenance, operations, and administration of Projects.
- c. Director: As to District, the Director of the Regional Flood Control District. As to University, the Director or Designee of the University's Sponsored Projects & Contracting Services Director of Preaward Services.
- d. Project Service Agreement: A specific agreement between the District and the University for the provision of Project Services for a particular Project, in substantially the form depicted in attached **Exhibit A**.
- e. Other Agreement: An agreement between the District, the University, and/or Student for other types of services that are specific to a particular task, project, learning opportunity or exchange of some sort that is consistent with purpose of this IGA.
- f. Public Works: Any form of work activity that involves the direct or indirect application of applied science and math to the study, design, construction, maintenance, and operations of District infrastructure.

- 2. Purpose.** The purpose of this IGA is to set forth the responsibilities of the parties regarding the provision of Project Services or other Public Works services by the University to the District on an as-needed and as-available basis. For those services involving a Project Service Agreement, this may include reimbursement of incurred costs for the Project Services either directly or indirectly through another party. Other Public Works services may or may not include provision for reimbursement. Additionally, this IGA sets forth an understanding between the District and the University to collaborate to find opportunities on which to make this happen when it is mutually beneficial. Project Services and other Public Works services may take the following forms:

Projects

- The University provides faculty or administrators as Qualified Personnel to perform Project Services, research, and/or other Public Works services to the District.
- The University provides and supervises Student interns for District Project Services, either unpaid or paid directly by the University through Project Service Agreements.
- The University provides like Project Services to a third party who is providing Public Works services either directly to the District or for another agency or party the District has an interest in or with (e.g. a local Consultant Engineering firm performing services to District on a District funded project).

Internship, Work Shadow, and Employment

- The District, if the need arises and if funding is available and the positions are needed, will establish and maintain paid Student internships to support the work of the District and competitively recruit them from the University.
- The District, as possible, will provide unpaid work shadow opportunities to Students if requested by the University to do so. The University will evaluate and provide qualified Student interns to volunteer for the District to do research work or participate in a project.
- The District, if the need arises and if funding is available and the positions are needed, will establish and maintain full-time entry level public works positions and competitively recruit them from the University upon graduation.
- Internship, Work Shadow, and Employment arrangements may require a separate written agreement between the parties and the Student.

Other opportunities may arise; this specific list is not meant to be a limiting list of what can be accomplished under this IGA.

3. Project Service Agreements.

- a. By this IGA, the District delegates to its Director or Director's designee, and the University delegates to its Sponsored Projects & Contracting Services Director or Preaward Services or Director's designee, the authority to negotiate, execute, modify, and terminate any Project Service Agreement or Other Agreement in accordance with the terms and conditions of this IGA.
- b. Either party's Director or Director's designee may request that the parties enter into a Project Service Agreement. Upon a request, the parties' Director or Director's designee will review the request and, if mutually desirable, meet to discuss it.
- c. In the event the Director/or Director's designee disagree on any element of a proposed Project Service Agreement, the element in dispute may be submitted to the District Administrator and the University's Senior Vice President for Research for resolution.

d. Any proposed Project Service Agreement shall be in writing, in substantially the form attached as **Exhibit A**, and shall include, at a minimum:

- i. The term of the Project Service Agreement, which may not extend beyond the term of this IGA.
- ii. A description of the Project Services that the University will provide to the District under the Project Service Agreement.
- iii. The specific responsibilities of the District and University with respect to the Project. If any Project is federally funded, it will include the federal flowdown terms and conditions applicable to University, and any required certifications or affidavits to be signed by University.
- iv. An estimate of the cost of Project Services, if applicable, for the Project that is the subject of the Project Service Agreement. The estimate is for budgetary scheduling and is not a contractual guarantee, a cost ceiling, or an “upset limit.”
- v. Billing rates and the method for calculating payment, if applicable, to the other party. The billing rates may be reviewed periodically during the term of the Project Service Agreement, and parties, through their Director/Principal, may agree in writing to revise the rates to reflect actual costs.
- vi. A designated representative of the District, if applicable, to receive invoices from the University and to approve the invoices for payment.
- vii. A schedule for paying invoices, if applicable, which shall provide that payment is due no later than 30 days after receipt of an invoice.

e. Each Project Service Agreement shall be signed by the Authorized Signatory of each Party with the express authority or delegation to execute such documents on behalf of their respective Party.

f. Any amendment to a Project Service Agreement must be in writing and signed by the Director for each party.

g. Either party’s Director may terminate a Project Service Agreement at any time by providing the other party with written notice of such termination. After a Project Service Agreement is terminated, the District’s obligation to the University shall be limited to payment for services rendered before termination, including any non-cancelable obligations incurred by University prior to District’s termination.

4. **Execution of Projects Subject to Project Service Agreements.** After a Project Service Agreement is executed, the University shall perform the Project Services specified in the Project Service Agreement for the District. Qualified Personnel from the University shall be paired up with their counterparts in the District for coordination purposes. Coordination shall include regular meetings and interaction between corresponding personnel at all levels for each assignment.

5. Responsibilities of the Parties.

The District shall be responsible for:

- a. Decision making authority over the Project.
- b. Approving and processing all design documents, studies, contract documents, change orders, progress payments, and final acceptance of the Project Services completed.
- c. Upon review and approval of invoices, paying the University in accordance with a schedule set forth in the Project Service Agreement.
- d. Evaluating, at its discretion, the Project Services provided by the University and to verify that the Project Services are completed in accordance with the Project Service Agreement.
- e. Providing, whenever possible, opportunities for Students to gain Public Works project and other related work experience through a variety of methods that are enabled by this IGA, and provide evaluation of each University Student's progress, in a format and at such times as directed by the University. Areas of evaluation may include, but are not limited to: professionalism, ability to give and receive feedback effectively, adherence to industry professional standards, and competence.
- f. Provide all applicable written District policies, regulations and directives to University Students and Faculty, and instruct University of facility safety procedures and operations. District will provide University Students and Faculty with at least the same safety training it provides to its regular employees working under similar conditions. District may relieve any University Student or Qualified Personnel from further participation if, in its sole discretion, it believes that such University Student or Qualified Personnel has violated District policies, regulations and/or directives. District shall notify the University Director immediately, and follow up such action in writing.

The University shall be responsible for:

- a. Identifying and developing recommendations with respect to the Project Services, and sharing those recommendations with the District.
- b. Establishing a list of overhead charges/rates for Project Services as required in Section 3.
- c. Providing sufficient Qualified Personnel to perform or supervise the Project Services with the necessary care, skill, and diligence.
- d. Preparing invoices (in the form approved by the District) for submission to the District. The University shall approve, sign, and forward billing documents to the District's designated representative for approval and payment.
- e. Provide District with the University program objectives, and/or desired learning experiences in advance of the University Students' placement, and provide District with appropriate instruction in supervision of and completing the evaluation forms for the University Students;

f. Schedule, through the University Director or Designee, to confer at regular intervals, but no less than annually, with District to discuss the learning experience, instruction, supervision and evaluation of University Students.

6. Change Orders/Amendments.

a. Change Orders/Amendments to any Project Service Agreement shall be approved in writing by the District prior to implementation unless the changes are deemed to be of an emergency nature, or due to unforeseen conditions or other circumstances, or could cause extra cost to the District if not done immediately. In the event of such conditions, the University may execute the necessary changes with verbal approval of the District's designated representative and provide a written notification of the changes to the District within three (3) working days of the discovery, if a change order/amendment is deemed to be necessary.

b. All amendments to this IGA shall be in writing signed by the authorized signatories of both parties prior to the implementation of the amended terms.

7. Financing.

a. The District shall pay the cost of all Project Services rendered by the University under all Project Service Agreements.

b. The District makes no commitment to fund any project unless such funds can be made available to do so either through the normal budget, grant or appropriation of bond funds. However, if a project is funded the District's reimbursement to the University, shall not exceed a total of \$750,000.00 (approximately \$150,000 per year) under all Project Service Agreements during the term of this IGA. This total amount of \$750,000.00 may be adjusted by mutual agreement between the District and the University during the five (5) year term of this IGA or for term extension(s) as indicated in Section 9.

d. Each party shall establish a job cost account to identify and track all costs of Project Services associated with each Project Service Agreement.

e. In the case of dispute on reimbursement of invoices/billings for Project Services rendered, the dispute shall be escalated to the Director of each party for resolution on request of either party's designated representative. In the event the Directors for either party disagree on any element of the invoices/billings, or fail to take action within 10 days of the request, the element in dispute shall be submitted to the District Administrator and the University's Senior Vice President for Research for resolution on request of either Director. If the dispute is submitted to the District Administrator and the University's Senior Vice President for Research but they are unable to resolve the dispute, or fail to take action within 10 days of a request, the parties may pursue any remedies provided by law.

8. Other Uses for this IGA. This IGA may also be used for other similar professional services that are mutually agreed upon by both parties and by the express approval of both Directors.

9. Ownership of Information. Ownership of intellectual property developed during the course of this Agreement, if any, shall be established by application of U. S. Patent Law (Title 35 U.

S. Code) and U.S. Copyright Law (Title 17 U.S. Code) and employment contracts of the developer(s), subject to any rights of the Federal Government, if federally funded. All materials produced by University in the performance of this IGA, including but not limited to reports, estimates, drawings, plans, computations, data, software, etc. may be used by District for any non-commercial purpose. University shall have the right to use its materials, without restriction or limitation, for non-commercial purposes including for the purposes of research, education, and publication or presentation in academic journals or symposia. Any such publication or presentation will be provided to District at least thirty (30) days in advance of such proposed publication or public presentation. District shall have thirty (30) days after receipt of said copies to object to such proposed public dissemination; in which event University shall refrain from making such publication or presentation for a maximum of ninety (90) days from the date of receipt of such objection in order for District to take appropriate measures to protect confidential information. Any publication or presentation will acknowledge the funding support of District and any other third party funding source, with the disclaimer that such acknowledgment does not represent the opinions or views of the District or of the third party.

10. Term and Termination.

- a. Term.* The initial term of this IGA shall begin on the date this IGA is executed by the last party to sign it, and shall be effective for a period of five (5) years from the date of such recordation, plus the time to complete any pending project service agreement in effect at that time. The time to complete any pending project service agreement in effect at the end of the five-year term will not exceed one additional year. Upon completion of the initial five (5) year term, this IGA may be renewed for an additional five (5) year term by written amendment approved and signed by the parties.
- b. Termination.* This IGA may be terminated under the following circumstances:
 - i. For Convenience.* At any time either party to this IGA may terminate this IGA by providing to the other party written notice of such termination at least sixty (60) calendar days prior to the termination date. Such termination shall not relieve either party from those liabilities or costs incurred or obligated prior to the termination date.
 - ii. For Cause.* A party may terminate this IGA for material breach of the IGA by the other party. Prior to any termination under this paragraph, the party allegedly in default shall be given written notice by the other party of the nature of the alleged default. The party said to be in default shall have forty-five (45) calendar days to cure the default. If the default is not cured within that time, the other party may terminate this IGA. Any such termination shall not relieve either party from liabilities or costs already incurred or obligated under this IGA.
 - iii. For Failure to Appropriate Sufficient Funds.* Any Project Service Agreement or Other Agreement entered into pursuant to this IGA shall automatically terminate or be delayed if, for any reason, the District or University fails to appropriate sufficient funds to fund the project or activity that is the subject of the Project Service Agreement or Other Agreement. The project can restart if funds become available and both parties agree to restarting the project.

- iv. For Conflict of Interest. This IGA may be terminated for a conflict of interest as set forth in A.R.S. § 38-511, the relevant portions of which are hereby incorporated by reference.

- 11. Limitation of Liability.** The District shall have full responsibility for all claims, costs, or damages arising out of the District's project, however the District reserves the right to proceed against the University in the event the District determines that the University shares some liability for any claim, cost or damage arising from the project. Each party (as "Indemnitor") agrees to defend, indemnify, 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, 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. This provision survives termination of this Agreement.
- 12. Insurance.** Each party will be responsible to carry adequate insurance to cover their respective liability arising as a result of their performance under this IGA. When requested, a party shall provide the other party with proof of its worker's compensation, automobile, accident, property damage, and liability coverage or program of self-insurance.
- 13. Workers Compensation.** An employee of either party shall be deemed to be an employee of both public agencies while performing pursuant to this IGA for purposes of A.R.S. § 23-1022 and the Arizona Workers Compensation laws. The primary employer shall be solely liable for any workers compensation benefits which may accrue. Each party shall post a notice pursuant to the provisions of A.R.S. § 23-906 in substantially the following form:

All employees are hereby further notified that they may be required to work under the jurisdiction or control or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of workers compensation.

- 14. Inspection and Audit.** The District may perform an inspection of any Project or an audit of the University's Project books and records at any time in order to verify that monies spent on the Project were done so in accordance with this IGA. If a Project Agreement is funded by a third party, that third party is also entitled to perform such inspection or audit as necessary, including by the Comptroller General of the United States for any federally funded services.

15. Construction of IGA.

- a. *Entire Agreement.* This instrument 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.
- b. *Amendment.* This IGA shall not be modified, amended, altered or changed except by written agreement signed by the parties.

c. *Construction and interpretation.* All provisions of this IGA shall be construed to be consistent with the intention of the parties as expressed in the recitals hereof.

d. *Captions and headings.* The headings used in this IGA are for convenience only and are not intended to affect the meaning of any provision of this IGA.

e. *Severability.* In the event that any provision of this IGA or the application thereof is declared invalid or void by statute or judicial decision, such action shall have no effect on other provisions and their application which can be given effect without the invalid or void provision or application, and to this extent the provisions of the IGA are severable. In the event that any provision of this IGA is declared invalid or void, the parties agree to meet promptly upon request of the other party in an attempt to reach an agreement on a substitute provision.

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 or joint venture between the parties. No 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 this IGA is intended to create duties or obligations to or rights in third parties not party to this IGA. The basic purpose of this IGA is to help enable benefit to the citizens of Pima County and the State of Arizona.

18. 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 IGA.

a. *Anti-Discrimination.* The provisions of A.R.S. § 41-1463 and Executive Order 2009-09 issued by the Governor of the State of Arizona, which amended Executive Order 75-5 and superseded Executive Order 99-4, are incorporated by this reference as a part of this IGA as if set forth in full herein.

b. *Americans with Disabilities Act.* This IGA is subject to 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.

c. *Legal Arizona Workers Act Compliance.* Each party warrants to the other that it will, at all times during the term of this IGA, comply with all federal immigration laws applicable to the warranting 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 further agrees to ensure that each contractor who performs work associated with any Project subject to this IGA (i) complies with the State and Federal Immigration Laws, and (ii) ensures that any subcontractor who performs work for the contractor complies with the State and Federal Immigration Laws.

Each party shall further require that each contractor who performs work on a Project subject to this IGA advises each subcontractor of the party's rights, and the subcontractor's

obligations, with respect to this subsection, 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 contract 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 [District or University] 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 contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract.”

Any breach of the warranty of compliance with the State and Federal Immigration Laws by either party, by that party’s contractor on a Project subject to this IGA, or by a subcontractor of that party’s contractor on a Project subject to this IGA shall be deemed to be a material breach of this IGA subjecting the breaching party to penalties up to and including suspension or termination of this IGA. A party in breach of the warranty of compliance with State and Federal Immigration Laws shall further be liable to the other party for any additional costs attributable directly or indirectly to remedial action under this subsection.

Either party may, at any time, inspect the books and records of the other party in order to verify the other party’s compliance with the State and Federal Immigration Laws.

- d. *Israel Boycott Certification.* Each party certifies that it is not currently engaged in, and will not for the duration of this Agreement engage in, a boycott of Israel as defined by A.R.S. § 35-393.01. Violation of this certification may result in termination of this Agreement.

- 19. **Waiver.** Waiver by any party of any breach of any term, covenant or condition herein contained shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
- 20. **Force Majeure.** A party shall not be in default under this IGA if it does not fulfill any of its obligations under this IGA because it is prevented or delayed in doing so by reason of uncontrollable forces. The term “uncontrollable forces” shall mean, for the purpose of this IGA, any cause beyond the control of the party affected, including but not limited to failure of facilities, breakage or accident to machinery or transmission facilities, weather conditions, flood, earthquake, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, strike, lockout, labor dispute, boycott, material or energy shortage, casualty loss, acts of God, or action or non-action by governmental bodies in approving or failing to act upon applications for approvals or permits which are not due to the negligence or willful action of the parties, order of any government officer or court (excluding orders promulgated by the parties themselves), and declared local, state or national emergency, which, by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligations by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

- 21. Notification.** All notices or demands upon any party to this IGA shall be in writing, unless other forms are designated elsewhere, and shall be delivered in person or sent by mail addressed as follows:

University:

Stephen G. Harsy, PhD
Sponsored Projects & Contracting Services
P.O. Box 210158, Room 515
Tucson, AZ 85721-0158

District:

Suzanne Shields, Director
Pima County Regional Flood Control District
201 N. Stone, 9th Floor
Tucson, AZ 85701

Either party may, by written notice to the other, designate a different person or address for the receipt of notices under this IGA.

Any written notice under this IGA shall be deemed delivered and received on the date of delivery, if delivered by hand, or three business days after the date of mailing, if sent by mail.

- 22. Remedies.** Either party may pursue any remedies provided by law for the breach of this IGA. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or in equity or by virtue of this IGA. The Parties acknowledge that disputes arising from this Agreement may be subject to arbitration in accordance with applicable law and court rules.

[Signatures to Follow]

In Witness Whereof, the Pima County Regional Flood Control District has caused this IGA to be executed by the Chair of the Flood Control District Board and attested to by the Clerk of the Board, and by the Arizona Board of Regents, University of Arizona has caused this IGA to be executed by the University's Sponsored Projects & Contracting Services.

**PIMA COUNTY REGIONAL
FLOOD CONTROL DISTRICT:**

**ARIZONA BOARD OF REGENTS,
UNIVERSITY OF ARIZONA:**

Richard Elías, Chairman
Flood Control District Board

Mark A. Drury, Contracts Manager

Date

Date

ATTEST:

Clerk of the Board

Date

APPROVED AS TO CONTENT:



Suzanne Shields, Chief Engineer and Director
Pima County Regional Flood Control District

8-6-18

Date

ATTORNEY CERTIFICATION

The foregoing IGA by and between the Pima County Regional Flood Control District and the Arizona Board of Regents, University of Arizona 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.


Kell Olson, Deputy County Attorney

9/5/18
Date

Printed Name:
Title: Associate General Counsel,
University of Arizona

Date

Exhibit A

Project Services Agreement between the Pima County Regional Flood Control District and the Arizona Board of Regents, University of Arizona for the _____ Project

This Project Services Agreement is entered into by and between the Pima County Regional Flood Control District ("District") and the Arizona Board of Regents, University of Arizona ("University"), pursuant to A.R.S. § 11-952 and the applicable Intergovernmental Agreement (IGA) between District and University for Project Services and Related Research, Education, and Employment, dated _____.

Recitals

- A. The District plans to: *[title and describe Capital Project]* (the "Project").
- B. The District desires the University to provide the Project Services set forth in this Project Services Agreement for the Project, under the terms and conditions stated herein and as provided in the IGA.
- B. The University agrees to provide to the District the Services set forth in this Project Services Agreement for the Project, under the terms and conditions stated herein and as provided in the IGA.
- C. The parties have agreed to a maximum fixed cost for Project Services to be provided by University under this Project Services Agreement in the amount of \$_____.
[Remove if not applicable]

Agreement

- 1. **IGA.** This Project Services Agreement incorporates all definitions, terms, and conditions of the IGA.
- 2. **Effective Date; Term.** This Project Services Agreement is effective on execution by the last party to execute it. The term of this Project Services Agreement is ____ year(s) from the effective date.
- 3. **Project Services.** The University shall provide to the District the Project Services for the Project as further described in the attached Scope of Work.
- 4. **Responsibilities of the Parties.**

- a. **District.** In addition to the responsibilities set forth in the IGA, the District shall have the following responsibilities:

[List additional responsibilities or anything else that is applicable, or remove if not applicable.]

- b. **University.** In addition to the responsibilities set forth in the IGA, the University shall have the following responsibilities:

[List additional responsibilities or anything else that is applicable, or remove if not applicable. Any federal flowdown terms and conditions applicable to the University should be incorporated or referenced here.]

5. **Billing and Payment.** The University shall invoice the District monthly for Project Services rendered at the rates agreed to be reasonable and applicable and defined as follows:

[Insert any applicable agreed-upon rates and budgeted line items, as desired by the parties.]

The District's Designated Representative shall review each invoice to approve the invoices for payment. Invoices reviewed and approved for payment shall be paid within 30 days of submission to the District. *[Remove if not applicable – if fixed price, should describe a regular payment schedule with dates and/or percentages of total amount to be paid]*

6. **Designated Representatives.** The parties designate the following people to serve as their Designated Representatives for purposes of initial communication regarding the Project *[if different from IGA]*:

District: *[Insert name, title, address, telephone]*

University: *[Insert name, title, address, telephone]*

7. **Termination.** Either party's Director/Principal may terminate this Project Services Agreement by advance written notice to the other party's Director/Principal.

8. **Notices.** All notices or demands upon any party to this Project Services Agreement shall be in writing, unless other forms are designated elsewhere, and shall be delivered in person or sent by mail addressed as follows:

University:

Sponsored Projects &
Contracting Services
P.O. Box 210158, Room 510

District:

Suzanne Shields P.E., Director
Pima County Regional Flood Control District
201 N. Stone Ave., 9th Floor

Tucson, AZ 85721-0158

Tucson, AZ 85701

Either party may, by written notice to the other, designate a different person or address for the receipt of notices under this Agreement, without requiring an amendment.

Any written notice under this Project Services Agreement shall be deemed delivered and received on the date of delivery, if delivered by hand, or three business days after the date of mailing, if sent by mail.

PIMA COUNTY REGIONAL FLOOD CONTROL DISTRICT:

Suzanne Shields, Director
Pima County Regional Flood Control District

Date

ARIZONA BOARD OF REGENTS, UNIVERSITY OF ARIZONA:

Mark A. Drury, Contracts Manager
Sponsored Projects & Contracting Services
University of Arizona

Date