



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

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: December 3, 2019

\* = Mandatory, information must be provided

or Procurement Director Award ☐

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

Department of the Air Force, Davis-Monthan Air Force Base

**\*Project Title/Description:**

Intergovernmental Agreement Between Pima County and Department of the Air Force, Davis-Monthan Air Force Base

**\*Purpose:**

The purpose of this agreement is to resolve the disagreement between DMAFB and the County regarding Wastewater Utility Fees (WUF) previously charged for past changes to DMAFB wastewater conveyance and treatment capacity allocations. The agreement also defines how Wastewater Utility Fees for future changes to DMAFB capacity needs will be addressed.

**\*Procurement Method:**

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

**\*Program Goals/Predicted Outcomes:**

The agreement establishes an initial baseline for wastewater flows at 25 million gallons per month. Once exceeded, WUF will be calculated per the agreement, establishing a new baseline, and WUF will be due to the County. To establish a process for annual review of growth on DMAFB.

**\*Public Benefit:**

Appropriate WUF will be collected.

**\*Metrics Available to Measure Performance:**

DMAFB will provide five (5) year projections of wastewater flows prior to December 31st of each year. If wastewater flows are expected to exceed 90% of the baseline, DMAFB will enter into discussions with the County to address the expected impact on the regional wastewater conveyance and treatment system.

**\*Retroactive:**

No.

To: COB- 11-15-19  
Ver. - 1  
Pgs. - 6 (2)

**Contract / Award Information**

Document Type: CTN Department Code: WW Contract Number (i.e., 15-123): 20\*074  
Effective Date: 12/03/2019 Termination Date: 12/03/2044 Prior Contract Number (Synergen/CMS): \_\_\_\_\_  
☐ Expense Amount: \$\* 02.2021 ☐ Revenue Amount: \$ \_\_\_\_\_

**\*Funding Source(s) required:**

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.: \_\_\_\_\_  
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: Eric Wieduwilt

Department: Pima County Regional Wastewater Reclamation Telephone: 724-9841

Department Director Signature/Date: [Signature] 11/4/19

Deputy County Administrator Signature/Date: [Signature] 11/8/19

County Administrator Signature/Date: [Signature] 11/8/19  
(Required for Board Agenda/Addendum Items)

CONTRACT	
NO.	CTN-WW-20-074
AMENDMENT NO. _____	
This number must appear on all invoices, correspondence and documents pertaining to this contract.	

# **INTERGOVERNMENTAL AGREEMENT**

**BETWEEN**

**PIMA COUNTY, ARIZONA**

**AND**

**THE UNITED STATES AIR FORCE, DAVIS-MONTHAN AIR FORCE BASE**

This Intergovernmental Agreement (IGA) is entered into by and between Pima County, a body politic and corporate of the State of Arizona ("County") and the United States Air Force, Davis Monthan Air Force Base ("DMAFB").

## **RECITALS**

- A. County may contract for services and enter into agreements with other governmental entities, including the federal government, for joint or cooperative action pursuant to A.R.S. § 11-951, *et seq.*
- B. County is authorized by A.R.S. § 11-264 to operate wastewater treatment and collection system.
- C. County is authorized by A.R.S. § 11-952 to enter into intergovernmental agreements.
- D. DMAFB is authorized to enter into intergovernmental support agreements with State and local governments pursuant to 10 U.S.C. § 2679.
- E. DMAFB (a "User" as defined by County Code) discharges wastewater to the County collection system through a dedicated metering facility owned by County.
- F. County monitors total wastewater flow each month and, based on those flows charges DMAFB, pursuant to another agreement, a User Fee (as that term is defined by County Code) for the cost of transporting and treating DMAFB's wastewater.
- G. County previously charged a Connection Fee to each User as an allocation of the User's estimated share of the capital cost to provide wastewater conveyance and treatment capacity. In accordance with County Code Title 13, Chapter 13.20, as amended, County now assesses a Wastewater Utility Fee for the same purpose.
- H. County and DMAFB have historically disagreed on whether DMAFB properly compensated County for the amount of conveyance and treatment capacity allocated to DMAFB.
- I. County and DMAFB have reached agreement on a method to manage past and future claims for Wastewater Utility Fees resulting from changes to DMAFB's capacity needs.

**NOW, THEREFORE**, County and DMAFB pursuant to the above, 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 resolve the disagreement between DMAFB and County regarding Wastewater Utility Fees previously charged for past changes to DMAFB wastewater conveyance and treatment capacity allocations. This IGA also defines how Wastewater Utility Fees for future changes to DMAFB capacity needs will be addressed.

**B. Settlement.** In resolution of outstanding disagreements about Wastewater Utility Fee payments, County and DMAFB agree as follows:

- a. County waives its claim that DMAFB failed to pay Wastewater Utility Fees due for fixture unit equivalent additions at DMAFB as well as any other increases in water use potential occurring through the date of this Agreement.
- b. County will assess and DMAFB will pay a Wastewater Utility Fee in an amount defined herein if DMAFB discharges from DMAFB wastewater in an amount that exceeds the Baseline, as defined herein. The volume of wastewater discharged by DMAFB will be measured at the existing metering station or through another measurement method agreed to by the parties.
  - i. The Baseline is established initially at 25 million gallons per month.
  - ii. The Baseline is exceeded if the total measured monthly volume of wastewater discharged from DMAFB is greater than the Baseline in three or more months during a calendar year.
  - iii. If the Baseline is exceeded, the Wastewater Utility Fee is calculated as the daily Baseline overage multiplied by the daily "cost of capacity" and the "system inflow and infiltration rate factor", as set in County Code Section 13.20.600(C). Currently the cost of capacity is \$16.50/gallon/day and the system inflow and infiltration rate is 1.175. The Wastewater Utility Fee calculation is represented by the formula:

$$\text{Wastewater Utility Fee} = C * G * I$$

where      C = the cost of capacity (\$/gallon/day)

G = the daily Baseline overage (gallons per day), which is calculated by (i) subtracting the Baseline from the average monthly volume of wastewater discharged from DMAFB during the three highest discharge months of the calendar year and (ii) converting the monthly overage into a daily rate by multiplying it by 12 months and dividing it by 365 days

I = the system inflow and infiltration rate factor (no units)

- iv. Each time DMAFB pays an additional Wastewater Utility Fee, the Baseline will be increased by the amount of Baseline exceedance used to calculate the Wastewater Utility Fee. Baseline adjustments do not require an amendment to this Agreement.
  - c. County cannot, by law, accept quantities of wastewater in excess of the permitted conveyance and treatment system capacities. In order to aid in County's planning for capacity increases, DMAFB agrees to provide County a five-year projection of DMAFB wastewater generation on or before December 31<sup>st</sup> of each year. The projection shall consider the impact of net additional square footage of building space planned for DMAFB for which construction funds have been appropriated. If at any time a projection shows wastewater generation is expected to exceed 90% of the Baseline, DMAFB agrees to enter into planning discussions with County to address the expected impact of DMAFB construction on County's conveyance and treatment systems. County and DMAFB agree that this planning process supersedes the requirement for DMAFB to obtain Determinations of Capacity Availability set forth in County Code §13.20.200(B) and §13.20.300(B)(3) for new construction on DMAFB.
- C. **Term.** This IGA shall be effective on the date last signed by both parties and shall continue for a period of ten (10) years, which term is renewable in ten (10) year increments by agreement of both parties unless it is, prior to the expiration of any period, terminated by agreement of the parties.
- D. **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.
- E. **Non-Discrimination.** To the degree required by law, the parties shall 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 shall comply with the provisions of Executive Order 75-5, as amended by Executive Order 99-4, which is incorporated into this IGA by reference, as if set forth in full herein.
- F. **ADA.** To the degree required by law, the parties shall 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.
- G. **Severability.** If any provision of this IGA, or any application thereof to the parties or any person or circumstances, is held invalid, such invalidity shall 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 declared to be severable.

- H. 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.
- I. 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, shall be null and void, and no recovery may be had by either party against the other for lack of performance or otherwise.
- J. Worker's Compensation.** To the degree required by law, each party shall 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 to the extent required by law.
- K. No Joint Venture.** It is not intended by this IGA to, and nothing contained in this IGA shall be construed to, create any partnership, joint venture, or employment relationship between the parties or create any employer-employee relationship between County and any DMAFB employees, or between DMAFB 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.
- L. No Third Party Beneficiaries.** Nothing in the provisions of 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.
- M. Notice.** Any notice required or permitted to be given under this IGA shall be in writing and shall 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, RWRD  
201 N. Stone Avenue, 8th Floor  
Tucson, Arizona 85701

**DMAFB:**

Energy Engineer/Utility Manager, 355 CES  
3775 S. Fifth Street  
Davis-Monthan AFB, AZ 85707

*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

N. **Availability of Funds.** This Agreement does not obligate any funds between the Parties. Notwithstanding the prior sentence, any financial obligation attributable to the Department of Defense and/or DMAFB that may arise from this or any agreement between the parties is contingent upon the availability of appropriated funds from which payment for those purposes can be made. No legal liability on the part of the Federal Government for any payment may arise until funds are made available for such a payment and DMAFB is notified the funds are available.

O. **Entire Agreement.** This document constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, concerning payment of Wastewater Utility Fees are hereby superseded and merged herein. Unless otherwise provided herein, this IGA shall not be modified, amended, altered, or extended except through a written amendment signed by the parties.

**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 DMAFB has caused this Intergovernmental Agreement to be executed by its Commander as follows:

PIMA COUNTY:

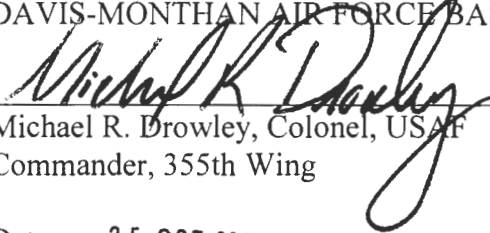
\_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST:

\_\_\_\_\_  
Clerk of the Board

Date: \_\_\_\_\_

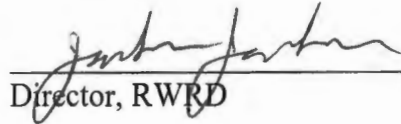
DAVIS-MONTHAN AIR FORCE BASE:

  
\_\_\_\_\_  
Michael R. Browley, Colonel, USAF  
Commander, 355th Wing

Date: 25 OCT 2019

## Approval

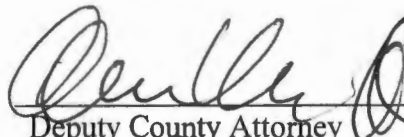
The foregoing Intergovernmental Agreement between Pima County and the Department of the Air Force has been reviewed by the undersigned, and is hereby approved as to content.

  
\_\_\_\_\_  
Director, RWRD

## Intergovernmental Agreement Determination

The foregoing Intergovernmental Agreement between Pima County and the Department of the Air force 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:

  
\_\_\_\_\_  
Deputy County Attorney