



BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: April 7, 2020

* = Mandatory, information must be provided

or Procurement Director Award ☐

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

Southwestern Fair Commission, Inc.

***Project Title/Description:**

Pima County Fairgrounds User and Wastewater Utility Fees

***Purpose:**

To establish the methodology for measuring User Fees and set a Capacity Baseline for calculating Wastewater Utility Fees.

***Procurement Method:**

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

***Program Goals/Predicted Outcomes:**

Collection of User Fees and Wastewater Utility Fees for services provided.

***Public Benefit:**

Appropriate fees will be collected.

***Metrics Available to Measure Performance:**

Monthly payments of User Fees based on metered flows.

***Retroactive:**

Yes. This contract is retroactive to February 27, 2020, which is the date the Pima County Fairgrounds was physically connected to the public sewer system. The connection assured that the Fairgrounds would have adequate wastewater capacity for the Annual Pima County Fair in April.

TO: CoB. 3.19.20
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pgs - 5 (11)

Contract / Award InformationDocument Type: CTN Department Code: WW Contract Number (i.e., 15-123): 20-120Effective Date: 2/27/2020 Termination Date: 2/26/2070 Prior Contract Number (Synergen/CMS): _____☐ Expense Amount: \$ _____ ☒ Revenue Amount: \$ \$22,000.00 Annually
Total Amount \$ 1,100,000.00 HL***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, Deputy DirectorDepartment: Pima County Regional Wastewater Reclamation Department Telephone: 724-9841Department Director Signature/Date: [Signature] 3/11/2020Deputy County Administrator Signature/Date: [Signature] 3/13/2020County Administrator Signature/Date: [Signature] 3/16/20
(Required for Board Agenda/Addendum Items)

Pima County Regional Wastewater Reclamation Department

Project: Pima County Fairgrounds Wastewater User Fee Agreement

Customer: Southwestern Fair Commission, Inc.

Contract No.: CTN-WW-20-120

Amount: \$1,100,000.00

WASTEWATER SERVICE CONTRACT

1. Parties, Background and Purpose.

- 1.1. Parties. This Contract is between Pima County, a body politic and corporate of the State of Arizona ("County"), and the Southwestern Fair Commission, Inc. ("Customer").
- 1.2. Customer operates the Pima County Fairgrounds (County parcel numbers 305-01-004K, 305-01-004L, 305-01-004M, and 305-01-004N), (the "Fairgrounds").
- 1.3. Formerly, wastewater treatment at the Fairgrounds was accomplished through use of an on-site lagoon system.
- 1.4. County constructed a new public sewer connecting the Fairgrounds sewage collection system to the County's sewerage system thereby eliminating the need to treat wastewater at the Fairgrounds. Connection of the Fairgrounds to the public sewerage system through the new sewer was accomplished on February 27, 2020 (the "Connection Date").
- 1.5. County also installed a wastewater flow meter to measure the flow from the Fairgrounds into the public sewerage system.
- 1.6. Through a separate Wastewater Utility Fee Payment Agreement, Customer agreed to pay an initial Wastewater Utility Fee established using a baseline maximum wastewater flow (as measured at the meter) of 162,000 gallons per day.
- 1.7. This Contract establishes a method for adjusting the Wastewater Utility Fee should the wastewater flows from the Fairgrounds exceed the baseline amount.
- 1.8. This Contract also establishes agreement on the payment of User Fees to cover the County's cost of transporting and treating the wastewater flows from the Fairgrounds.

2. **Term**. This Contract is retroactively effective as of the Connection Date of February 27, 2020 and all obligations under this Contract commence on that date. This Contract terminates fifty (50) years after the Connection Date.

3. **User Fees**. Customer acknowledges that all discharges from the Fairgrounds will be subject to Pima County Code, Title 13, Chapter 24, as amended. User Fees will be determined

based on monthly wastewater flows as measured in County's wastewater flow meter located at the Fairgrounds.

4. **Payment of Additional Wastewater Utility Fee.** The parties have set a baseline flow maximum of 162,000 gallons of wastewater per day (the "Baseline") into the public sewer system from the Fairgrounds as measured at the County's wastewater flow meter located at the Fairgrounds. In the event the Baseline is exceeded three or more times during a calendar month and, provided there is sufficient treatment and conveyance capacity in the public sewerage system, Customer agrees to pay to County, and County agrees to accept, an additional Wastewater Utility Fee per the following formula:

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

Where:

C = the County's cost of capacity (\$/gallon/day) as of the date of the exceedance;

G = the Baseline overage (gallons per day), calculated by subtracting the Baseline from the highest daily wastewater flow rate recorded during the calendar month triggering the recalculation; and

I = the sewerage system inflow and infiltration rate factor (no units) as of the date of the exceedance.

Each time Customer pays an additional Wastewater Utility Fee, the Baseline will be increased by the amount of the Baseline exceedance used to calculate the additional Wastewater Utility Fee. Baseline adjustments do not require an amendment to this Contract.

5. **Laws and Regulations.**

- 5.1. Compliance with Laws. Customer will comply with all federal, state, and local laws, rules, and regulations related to the subject matter of this Contract.

- 5.2. Choice of Law; Venue. The laws and regulations of the State of Arizona govern the rights and obligations of the parties under this Contract. Any action relating to this Contract must be filed and maintained in the appropriate court of the State of Arizona in Pima County.

6. **Non-Discrimination.** Customer will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this contract, including flow-down of all provisions and requirements to any subcontractors. During the performance of this Contract, Contractor 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.
7. **Authority to Contract.** Customer warrants its right and power to enter into this Contract. If any court or administrative agency determines that County does not have authority to enter into this Contract, County will not be liable to Contractor or any third party by reason of such determination or by reason of this Contract.

8. **Full and Complete Performance.** The failure of either party to insist, in one or more instances, upon the other party's full and complete performance under this Contract, or to take any action based on the other party's failure to fully and completely perform, is not a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time is not an accord and satisfaction.
9. **Cancellation for Conflict of Interest.** This Contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Contract by reference.
10. **Notice.** Any notice required or permitted to be given under this Contract must be in writing and be served by personal delivery or by certified mail upon the other party as follows:
- | | |
|-------------------------------------|------------------------------------|
| If to County: | If to Customer: |
| Director | Executive Director |
| Regional Wastewater Reclamation | Southwestern Fair Commission, Inc. |
| Department | 11300 S Houghton Rd. |
| 201. N Stone, 8 th Floor | Tucson AZ 85747 |
| Tucson AZ 85701 | |
11. **Remedies.** Either party may pursue any remedies provided by law for the breach of this Contract. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.
12. **Severability.** Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law will be ineffective to the extent of such prohibition without invalidating the remainder of this Contract.
13. **Israel Boycott Certification.** Pursuant to A.R.S. § 35-393.01, if Customer engages in for-profit activity and has 10 or more employees, and if this Contract has a value of \$100,000.00 or more, Customer certifies it is not currently engaged in, and agrees for the duration of this Contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.
14. **Amendment.** The parties may modify, amend, alter, or extend this Contract only by a written amendment signed by the parties.
15. **No Third Party Beneficiaries.** Nothing in this Contract is intended to create duties or obligations to or rights in third parties not parties to this Contract or affect the legal liability of either party to the Contract by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.
16. **Entire Agreement.** This document constitutes the entire agreement between the parties pertaining to the payment of User Fees for discharges to the public sewerage system and the calculation and payment of additional Wastewater Utility Fees for exceedance of the

Baseline, and this Contract supersedes all prior or contemporaneous agreements and understandings, oral or written regarding that subject matter.

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PIMA COUNTY

Chairman, Board of Supervisors

ATTEST

Clerk of the Board

Date: _____

APPROVED AS TO FORM

Victoria Baehinger
Deputy County Attorney

Date: 3/10/2020

APPROVED AS TO CONTENT

John J. Ford
Director, RWRD

**SOUTHWESTERN FAIR COMMISSION,
INC**

Jon Baker
Authorized Officer Signature

Jon Baker, Executive Director
Printed Name and Title

Date: 3/10/2020