



BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: 5-5-20

* = Mandatory, information must be provided

or Procurement Director Award ☐

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

Tucson Unified School District No. 1

***Project Title/Description:**

Agreement to invest in TUSD Warrants while case against the State of Arizona is pending

***Purpose:**

Commitment of County and County Treasurer to invest in TUSD registered warrants to cover shortfalls resulting from State's refusal to pay TUSD amounts owed under A.R.S. 15-972.

***Procurement Method:**

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

***Program Goals/Predicted Outcomes:**

Assist TUSD with cash flow issues

***Public Benefit:**

Lower borrowing costs for TUSD, and sound investment for Treasurer, benefits residents and taxpayers

***Metrics Available to Measure Performance:**

Registered Warrants must continue to be investment grade

***Retroactive:**

No

APR 30 2020 08:27 POC CLK-HD

Contract / Award Information

Document Type: CTN Department Code: TO Contract Number (i.e., 15-123): 20-00:152
Effective Date: 4/19/2020 Termination Date: Open Prior Contract Number (Synergen/CMS): _____
☐ Expense Amount: \$* _____ ☒ Revenue Amount: \$ variable \$ 0.00

***Funding Source(s) required:** County money held by Treasurer will be invested in TUSD registered warrants

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: BETH FORD

Department: Treasurer's Office

Telephone: 724-8775

Department Director Signature/Date: Beth Ford

4/14/2020

Deputy County Administrator Signature/Date: _____

County Administrator Signature/Date: C. J. D. [Signature]

4/14/2020

(Required for Board Agenda/Addendum Items)

Contract No: LTN-TO-20-152 Amendment No: _____

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

**Intergovernmental Agreement
among
Pima County and Tucson Unified School District No. 1.
Pima County, and the Pima County Treasurer
Regarding
State's Refusal to Pay Additional State Aid for Education**

This Intergovernmental Agreement ("IGA") is entered into by and between Pima County, a body politic and corporate of the State of Arizona ("County"), the Pima County Treasurer in her official capacity ("Treasurer"), and Tucson Unified School District No. 1 ("TUSD") pursuant to A.R.S. § 11-952.

1. Background and Purpose.

- 1.1. County and TUSD may contract for services and enter into agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-951, et seq.
- 1.2. The Pima County Board of Supervisors is responsible for calculating the property taxes due for each item of property within Pima County, based on the ad valorem taxes levied by Pima County and all other taxing jurisdictions within the County, in the manner provided by law, including in compliance with the 1% limitation in Ariz. Const. art. 9 § 18. A.R.S. § 42-17152.
- 1.3. The Board of Supervisors is also responsible for calculating credits for residential properties for which the 1% limitation is exceeded, deducting the credited amounts from the levy of the school district within which the property is located, and notifying the Arizona Department of Revenue ("ADOR") of the credited amounts, which the State is then required to pay to the school district in the form of additional state aid for education. A.R.S. § 15-972(E) through (H).
- 1.4. The Treasurer holds and accounts for each county school district's money, including TUSD's money, and, when necessary, registers school district warrants. A.R.S. § 15-996. The Treasurer has authority to invest money held by her, including County funds, in, among other things, registered warrants of school districts. A.R.S. §§ 35-323(A)(7) and 11-635.
- 1.5. The Legislature made certain amendments to A.R.S. § 15-910 in 2018. The County provided ADOR with the homeowner credit calculations for properties within TUSD for FY2018-19 (\$8,113,188.62), but the State refused to provide the additional state aid for education to TUSD, claiming that the amendment to § 15-910 relieved it of its obligation to provide this funding. The State has likewise refused to pay TUSD any 1% additional state aid for education for FY 2019-20.
- 1.6. TUSD and the County sued the State in tax court, cause number TX2018-000737. The court granted summary judgment in favor of TUSD and the State has appealed that

ruling. The court's order to pay TUSD the amounts owed is automatically stayed during the appeal.

- 1.7. As a result, TUSD has experienced cash shortfalls. The Treasurer has invested in TUSD registered warrants in order to cover those shortfalls.
- 1.8. Because of the on-going litigation, TUSD, Pima County, and the Treasurer have a common interest in continuing to manage, in this way, shortfalls experienced by TUSD as a result of the State's wrongful failure to pay the additional state aid. Doing so benefits TUSD residents as well as County taxpayers generally.

2. **Investment in Registered Warrants.**

- 2.1. Until such time as the litigation is final, and provided that the TUSD registered warrants are investment grade, the Board of Supervisors directs the Treasurer, and the Treasurer agrees to, continue investing County funds held by the Treasurer in TUSD warrants that are registered for properly budgeted expenses as a result of the State's failure to pay additional state aid for education. The Treasurer is not required by this IGA to invest in TUSD warrants, the face value of which, when added to the value of other outstanding TUSD warrants in which the Treasurer has invested, causes the total amount to exceed the state aid that the State owes but has not paid TUSD.
- 2.2. Warrants purchased by the Treasurer will be paid off using any cash that TUSD receives that can legally be used for that purpose, as and when the cash is received, and new warrants will be registered as new shortfalls are incurred.
- 2.3. TUSD will pay interest on the registered warrants using a rate equal to the rate actually earned by the Treasurer on the average monthly positive cash balances of other jurisdictions.

3. **Litigation.** TUSD and the County will cooperate to expedite the litigation as much as possible.

4. **Repayment of Warrants in Event of Adverse Ruling.** If the State is successful in obtaining a final resolution to the litigation that reverses the trial court's judgment, TUSD will pay off all outstanding warrants purchased by the Treasurer no later than the last day of the fifth fiscal year after the fiscal year in which the final ruling is issued.

5. **Term.** This IGA will be effective on the date it is fully executed by the parties and will continue until such time as all the TUSD registered warrants purchased by the Treasurer under the IGA have been paid.

6. **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.

7. **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:
 - 7.1. Commercial General Liability in the amount of \$2,000,000.00 combined single limit Bodily Injury and Property Damage.
 - 7.2. Commercial or Business automobile liability coverage for owned, non-owned and hired vehicles used in the performance of this Contract 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.
 - 7.3. If required by law, workers' compensation coverage including employees' liability coverage.
 - 7.4. Each party will provide thirty (30) days written notice to the other party of cancellation, non-renewal or material change of coverage.
 - 7.5. The above requirement may be alternatively met through a self-insurance program under to A.R.S. §§ 11-261 and 11-981 (or if a school district, § 15-382) or participation in an insurance risk pool under A.R.S. § 11.952.01 (if a school district, § 15-382), at no less than the minimum coverage levels set forth in this Section.
8. **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.
9. **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.
10. **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.
11. **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 herein by reference.
12. **Legal Authority.** No party warrants to the others 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 any party against the others for lack of performance or otherwise.

13. **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.
14. **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.
15. **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.
16. **Notice.** Any notice required or permitted to be given under this IGA must be in writing and 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:

TUSD:

Pima County Administrator
130 W. Congress St., 10th Floor
Tucson, AZ 85701

Tucson Unified School District
Legal Department
1010 E. 10th Street
Tucson, AZ 85719

And:

Pima County Treasurer
240 N. Stone Ave.
Tucson, AZ 85701-1199

17. **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.

PIMA COUNTY:

Chair
Board of Supervisors

ATTEST

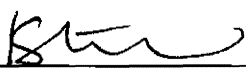
Clerk of the Board

PIMA COUNTY TREASURER



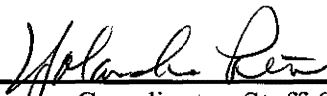
Hon. Beth Ford

TUCSON UNIFIED SCHOOL DISTRICT NO. 1:



Kristel Ann Foster
President of the TUSD Governing Board

ATTEST

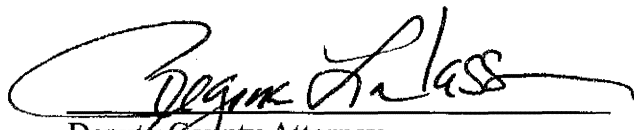


Program Coordinator Staff Services to Governing
Board

Intergovernmental Agreement Determination


The foregoing Intergovernmental Agreement among Pima County, the Pima County Treasurer, and Tucson Unified School District No. 1, 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 and PIMA COUNTY
TREASURER:**



Deputy County Attorney
REGINA NASSEN

**TUCSON UNIFIED SCHOOL DISTRICT
NO. 1**



TUSD General Counsel