



Board of Supervisors Memorandum

March 15, 2016

**Intergovernmental Agreement for
Water and Wastewater Utilities to the Sonoran Corridor
and Direct Utility Services to the World View Enterprises Site**

Background

The Board of Supervisors-adopted *Economic Development Plan–2015 through 2017* identifies investment in regional infrastructure as a critical component of economic development and job creation; and development of utility infrastructure for new job centers within the Sonoran Corridor is a key activity cited in Chapter 2 of the Plan.

In 2012, Pima County acquired property in the Sonoran Corridor to buffer Raytheon and to provide a site for location of Raytheon-compatible employers for economic development and job growth. This property is known as the Aerospace, Defense and Technology Research and Business Park (the Park). Pima County and the City of Tucson are working cooperatively to provide appropriate water and wastewater utilities to this County-owned property within the Sonoran Corridor.

World View Enterprises will be the first tenant to locate in the Park; and the County is in the early stages of constructing the 135,000 square foot facility that will be World View's headquarters. Most utilities need to be extended to the World View site. As the property owner and to ensure the facility is operational by the November 2016 goal, the County proposes to enter into an intergovernmental agreement (IGA) with the City of Tucson to design and construct the necessary public water main.

The County's Regional Wastewater Reclamation Department (RWRD) will manage design and construction of the public water main through the Job Order Contract process. The IGA contains the terms and conditions for the design, construction and transfer of the water main to the City of Tucson for ownership and operation of the water main in perpetuity. The County will pay the cost of design and construction, which is estimated to be approximately \$329,000. Upon completion and acceptance of the water main into the public system, the City will reimburse the County for the full cost of design and construction of the water main.

The IGA was approved by the Tucson Mayor and Council at their March 8, 2016 meeting.

The Honorable Chair and Members, Pima County Board of Supervisors
**Re: Intergovernmental Agreement for Water and Wastewater Utilities to the Sonoran
Corridor and Direct Utility Services to the World View Enterprises Site**

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Recommendation

I recommend the Board of Supervisors approve the attached Intergovernmental Agreement with the City of Tucson for construction of water facilities to County-owned property within the Sonoran Corridor.

Respectfully submitted,



C.H. Huckelberry
County Administrator

CHH/mjk – March 9, 2016

Attachment

**AGREEMENT FOR CONSTRUCTION OF WATER
FACILITIES UNDER PRIVATE CONTRACT**

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into this _____ day of _____, 2016, by and between the CITY OF TUCSON or the City, and PIMA COUNTY, or the Applicant, pursuant to A.R.S. § 11-952.

WITNESSETH:

WHEREAS, the Applicant desires to install a water facility to provide service to the following described parcel of land (1805 E. Aerospace Parkway, Tucson, AZ 85756; parcel no. 140-52-001E); and

WHEREAS, prior to the final inspection, Applicant shall pay to the City all applicable Fees as authorized by Section 27 of the Tucson Code; and

WHEREAS, Tucson Water agrees to reimburse the Applicant for the cost differential for constructing excess capacity in accordance with the rates as specified in the City of Tucson Ordinance No. 8838 (or as amended thereafter). Reimbursement payment shall be initiated upon "final acceptance" of the facilities by Tucson Water, and if applicable, any "oversize" costs shall be in addition to the sum of \$329,000 as referenced below in Section VI(6); and

WHEREAS, the Applicant desires to construct the water facility that will be depicted on the above-mentioned plans according to the specifications depicted thereon; and

WHEREAS, currently available fire flow from Tucson Water distribution mains in the area of the project, at 1000 GPM, does not meet standards for industrial fire suppression; and

WHEREAS, even with the limited resources available, the Applicant expects to satisfy any fire flow requirement for the current proposed tenant by the incorporation of a properly designed fire suppression storage and delivery system, as determined by the Fire Authority; this private fire suppression system will be connected to the facility that will be constructed pursuant to this Agreement through private plumbing, but is not eligible for reimbursement by Tucson Water; and

WHEREAS, Tucson Water has pending plans to increase available fire flow to the water facility by the construction of a nearby treatment plant, reservoir, and pumping facility for new Santa Cruz Well Field resources as part of a 2019 Capital Improvement Project; and

WHEREAS, the Applicant desires that the City take possession of, operate and service said water facility; and

WHEREAS, the City is willing to accept said facility and permit it to be connected to the City Water System provided it meets City standards and the work is done in accordance with City requirements; and

WHEREAS, time is of the essence, the City and Pima County have agreed to the Tenant's conditional occupancy date of November 2016, requiring expedited participation in resolving design, review, and construction issues;

NOW, THEREFORE, in consideration of the matters and conditions herein set forth, IT IS HEREBY AGREED AS FOLLOWS:

I. **GENERAL**

1. The Applicant shall design and install a water facility in accordance with the approved Plan to be submitted by Applicant pursuant to City Standard Waterworks Specifications and Details and special specifications and details as approved by the City and by this reference made a part hereof. A copy of the submitted and approved plan will thereafter be attached to this Agreement. The document referenced herein as [PN 3-012-2016] shall include a plan note for new water facility and any and all alterations to the existing water system.
2. The work permitted by this Agreement shall be done by a contractor properly licensed by the State of Arizona to perform work described herein in accordance with plans approved by the City.
3. Before any service connections are made to the system herein permitted the Applicant shall pay to the City the connection fees required by Section 27 of the Tucson Code or any other required fees referenced herein.
4. No service connections will be made until, (1) the system has been accepted by the City and (2) all fees are paid in accordance with Section 27 of the Tucson Code.
5. Any property connecting onto a water main must have a minimum of fifteen feet (15') of frontage upon that main. The provision or existence of a water or other utility easement shall not constitute frontage for purposes of this paragraph.
6. Meter application will be accepted only if the property to be served is fronting the waterline. Only one water meter application will be allowed per legal description unless property owner can provide Tucson Water with justified plans as to what type of improvement/development is taking place on the parcel of land. If a property owner applies for a meter while the property is fronting the water main and later sells that portion of land which is fronting the water main the water meter will revert to the new owner unless other arrangements are made and are approved by Engineering Support Services prior to conveyance.
7. The Applicant shall furnish all labor, materials, equipment, supplies and tools required to complete the work herein permitted.
8. Execution of this Agreement certifies that the Applicant has reviewed the plans and specifications, approved the location of service lines and is in full accord therewith.
9. Projects that are inactive for more than one year will be canceled. An unapproved plan will be canceled if more than one year has passed since the last review, and the plan has not been resubmitted. An approved plan will be canceled if more than one year has passed since plan approval, and construction has not begun.

II. ENGINEERING AND INSPECTION

1. The Applicant shall employ a registered Civil Engineer to accomplish system design and to lay out and establish control lines and certify the layout according to the approved plans.
2. The City shall provide a representative who is knowledgeable with the City Standard Waterworks Specifications and Details and special specifications and details; to serve on the County's design and construction review teams. The representative may attend the design and construction team meetings, assist in resolving issues and assist in the plan review of the water facilities, and shall be copied on all invoices related to design and construction. The current proposed tenant is also a member of the design and construction review teams, and is aware of the plans and specifications for construction of the water facilities and the fire flow limitations set forth above.
3. Prior to construction, the City shall affirm the Engineer's Construction Cost Estimate and participate in the construction bid evaluation process. If the total project cost estimate, excluding excess facility capacity as defined in City of Tucson Ordinance No. 8838, exceeds \$329,000 prior to the award of construction, Applicant

and City commit to an expedited review of the cost estimate to identify potential cost savings measures within five (5) working days of the cost estimate being made available to all parties. If this review is unable to reduce the cost estimate, City may opt to approve design and construction costs in excess of \$329,000; such excess costs are to be reviewed and approved by the City. The City will retain all plans.

4. It is expected that the required 30% plans, specifications, and materials for said facility will be submitted to the City on or before February 12, 2016. It is expected that the required 60% plans, specifications, and materials for said facility will be submitted to the City on or before March 18, 2016. It is expected that the required final set of plans, specifications, and materials for said facility will be submitted to the City on or before April 18, 2016. After submission, the first submittal shall be returned by the City within ten (10) working days of submittal, and any follow up submittals will be returned within 2 working days of receipt, except the final set of plans, which will be deemed ready for construction.
5. Any inspector authorized by the City shall have full inspection authority over the work to be performed hereunder. The Applicant shall furnish the City Inspector with reasonable facilities for obtaining full information concerning the work. The work shall be subject to City inspection at all times. Defective work shall be corrected in a manner satisfactory to the City Inspector. Inspection by the City is for the purpose of ensuring compliance with plans and specifications only. The City makes no guarantee as to the safety or engineering soundness of plans prepared by Applicant or any contractor.
6. In the event that, because of contractor scheduling, a City Inspector is caused to work any overtime, or during any hours other than normal 40 hours in a work period, or on a legal holiday as defined in City of Tucson Administrative Directive 2.01-6, the applicant or the contractor shall compensate the City for any additional salaries, expenses or employee benefits relating to such overtime or holiday work. Such additional inspection costs will be billed to the Applicant. A normal work period shall be defined as 40 hours in a seven (7) day work period, usually worked on an eight (8) hour day, five (5) day basis, commencing on Monday and ending on Friday, continuing in seven (7) day increments.

III. PRECONSTRUCTION PROCEDURE

1. The Applicant shall submit a written request to begin construction to the City five (5) working days prior to the time work is to commence.
2. This Agreement shall be completed, signed, notarized and returned to Tucson Water prior to issuance of a "Notice to Proceed." The Notice to Proceed will be issued at or shortly after the pre-construction meeting.
3. No work shall commence until the City has issued a "Notice to Proceed," which will specify the starting date and a reasonable time for completion.
4. Materials used in the construction shall be available for sampling and testing prior to being used in the work. Materials that fail to meet City specifications shall be removed from the site.
5. The Applicant shall, as part of the cost of construction, obtain all necessary permits and licenses for work permitted herein, pay all fees and comply with all laws, ordinances and regulations relating to the work, public health and safety of Applicant's employees or Applicant's contractor's employees.
6. No work shall commence until the Applicant or Applicant's contractor has obtained a construction water permit from the Business Services Division, Billing Office.

IV. CONSTRUCTION

1. The work shall be commenced on the date specified in the "Notice to Proceed."

2. The Applicant, or Applicant's designated agent, shall be present at all times during performance of the work. The name of the designated agent and the contractor performing the work shall be furnished to the City before commencement of the work. Instructions given the designated agent on the work site shall be deemed to have been given to the Applicant.
3. The Applicant shall employ only competent and efficient laborers, mechanics or artisans on the work and the Applicant agrees to perform the work diligently to complete the work on or before the completion date given in the "Notice to Proceed."
4. The Applicant shall identify and locate all water valves prior to paving and set valve boxes to final grade after paving.
5. The Applicant shall make any and all alterations to the existing water system, whether on-site or off-site, necessitated by paving, drainage, or other improvements caused by this development.
6. The Applicant shall require the Contractor or subcontractor to comply with all safety requirements of the Occupational Safety and Hazards Act as set forth by the Federal Government and as implemented by the State of Arizona. The Applicant or Applicant's contractor shall be solely responsible for all fines or other penalties provided for by law for any violations of the Occupational Safety Hazards Act.

V. INDEMNITY

1. 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") 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.

VI. DEDICATION

1. The Applicant shall, and does, hereby grant, bargain, sell, convey, transfer and deliver to the City, said water facility to be installed pursuant to this Agreement free and clear of all liens, claims, charges or encumbrances, upon final acceptance of said work and reimbursement of agreed costs by the City.
2. The Applicant guarantees the work to be free from all failures due to poor workmanship or materials for a period of two (2) years from the final acceptance date by the City. This is the City standard warranty for Waterworks; the two (2) year warranty shall apply only to Waterworks, and be separate from any warranty on sewer work.
3. The Applicant agrees that the City is not responsible for making any improvements to its water distribution infrastructure to provide additional fire flow capability to the water facility.
4. The Applicant shall not construct any utility, building or other improvement that would interfere with the operation or maintenance of the waterline or water facility to be installed pursuant to this agreement.
5. The Applicant further guarantees that all service lines, meters, and meter boxes will be constructed to finish grade.

6. The City shall accept title to and take possession of said facility upon completion of said work to the satisfaction of the City, and upon acceptance and approval of said work, the City shall operate and service said facility.
7. Within fifteen (15) days following final acceptance and completion of the facilities depicted on [PN 3-012-2016], the City of Tucson will pay Pima County up to \$329,000.00 toward its actual and billed expenses for design, construction and connection fees attributable to the water facilities to be depicted on [PN 3-012-2016], plus approved excess costs pursuant to section II.3, plus any excess facility capacity included in the project at the City's request. If the total cost of design, construction, and fees is less than \$329,000, not including any excess facility capacity, the City of Tucson will compensate Pima County for those actual costs.
8. This Agreement may be terminated by Applicant for any reason prior to the completion of final acceptance and completion of the facilities depicted on [PN 3-012-2016]. If so terminated, Applicant will bear its costs.
9. Disposal of Property. Upon the termination of this IGA, all property involved shall revert back to the owner. Termination shall not relieve any party from liabilities or costs already incurred under this IGA, nor affect any ownership of property pursuant to this IGA.
10. Compliance with Laws. The parties shall comply with all federal, state and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this IGA. The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this IGA and any disputes hereunder. Any action relating to this IGA shall be brought in an Arizona court in Pima County.
11. Non-Discrimination. 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 2009-09, which is incorporated into this IGA by reference, as if set forth in full herein.
12. ADA. 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.
13. 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.
14. 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.
15. Non-Appropriation. Notwithstanding any other provision in this IGA, this IGA may be terminated if for any reason the Pima County Board of Supervisors does not appropriate sufficient monies for the purpose of maintaining this IGA. In the event of such cancellation, Pima County shall have no further obligation to City other than for payment for services rendered prior to cancellation.
16. 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.

17. **Worker's Compensation.** 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.
18. **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 [insert party abbrev.] employees, or between [Insert party abbrev.] 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.
19. **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.
20. **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)

City Manager
255 West Alameda, 10th Floor
P.O. Box 27210
Tucson, Arizona 85726-7210

County Administrator
130 West Congress Street, 10th Floor
Tucson, Arizona 85701
21. **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, are hereby superseded and merged herein. This IGA shall not be modified, amended, altered or extended except through a written amendment signed by the parties and recorded with the Pima County Recorder, or Arizona Secretary of State, whichever is appropriate.

[Signatures on following page]

IN WITNESS WHEREOF, the City of Tucson has caused this Intergovernmental Agreement to be executed by the Mayor, upon resolution of the Mayor and Council, and attested to by the City Clerk and the County has caused this Intergovernmental Agreement to be executed by the Chair of its Board of Supervisors, upon resolution of the Board and attested to by the Clerk of the Board.

CITY OF TUCSON:

PIMA COUNTY:

Jonathan Rothschild, Mayor
City of Tucson

Sharon Bronson, Chair
Pima County Board of Supervisors

ATTEST:

ATTEST:

Roger Randolph
City Clerk

Robin Brigode
Clerk of the Board of Supervisors

Date: _____

Date: _____

APPROVED AS TO CONTENT:

Michael Ortega,
City Manager

Charles Huckelberry
County Administrator

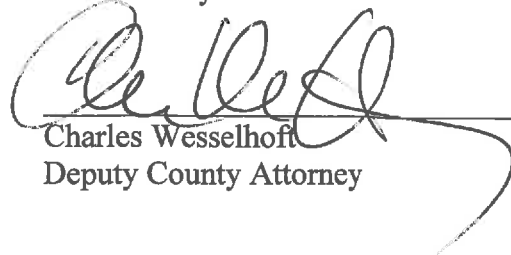
ATTORNEY CERTIFICATION

The foregoing Intergovernmental Agreement between Pima County and the City of Tucson has been reviewed pursuant to A.R.S. §11-952 by the undersigned, who have determined that it is in the 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.

City of Tucson

Pima County

Christopher Avery
Principal Assistant City Attorney



Charles Wesselhoff
Deputy County Attorney

To be Attached:
[PN 3-012-2016]