



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

Award Contract Grant

Requested Board Meeting Date: June 12, 2018

* = Mandatory, information must be provided

or Procurement Director Award

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

Humane Borders, Inc.

***Project Title/Description:**

Contract for the provision of water distribution services in remote areas of Pima County.

***Purpose:**

Contractor will provide water stations and potable water to various remote Sonoran Desert locations in Pima County to help reduce the need for aggressive search and rescue operations. In 2017, the contractor distributed more than 20,000 gallons of water. Health complications from dehydration and exposure will likely occur more often than other times of the year.

***Procurement Method:**

Pima County Board of Supervisors Policy D 29.6 C, Direct Selection

***Program Goals/Predicted Outcomes:**

The goal is to save desperate people and help reduce deaths by providing drinking water, water stations, and humanitarian aid in the Sonoran Desert; conducting prevention campaigns to encourage people to not cross the desert in the borderlands; and coordinating data for use by our community partners, first responders and the families of the deceased.

***Public Benefit:**

Recognizing the financial consequences these deaths have on our community resources, this contractor continues to provide a service to support Pima County by helping to reduce costs related to the provision of healthcare, law enforcement, coroner services and burial services.

***Metrics Available to Measure Performance:**

Humane Borders produces online reports (weekly and annually) to document the contractor's activities, including the number of water stations established, water gallons distributed, as.

***Retroactive:**

No.

TO: COB 5-30-2018
Vers.: 1
PSS.: 8

Contract / Award Information

Document Type: CT Department Code: CED Contract Number (i.e., 15-123): 18-390

Effective Date: 7/1/2018 Termination Date: 6/30/2019 Prior Contract Number (Synergen/CMS): _____

Expense Amount: \$* 30,000.00 Revenue Amount: \$ _____

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

Funding from General Fund? Yes No If Yes \$ 30,000.00 % _____

Contract is fully or partially funded with Federal Funds? Yes No

***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: Lisa for Jan Leshner, Chief Deputy County Administrator

Department: County Administrator Telephone: 724-8396

Department Director Signature/Date: [Signature] 5/23/18

Deputy County Administrator Signature/Date: [Signature] 5/23/18

County Administrator Signature/Date: [Signature] 5/23/18
(Required for Board Agenda/Addendum Items)



MEMORANDUM

Date: May 23, 2018

To: C. H. Huckelberry
County Administrator

From: Jan Leshner 
Chief Deputy County Administrator

Re: Direct Selection – Emergency Water Distribution in Remote Areas

Pursuant to Pima County Board of Supervisors Policy D 29.6 C, please approve the direct selection of Humane Borders, Inc. as the appropriate agency to provide the services required for locating and maintaining emergency water stations in remote areas of Pima County.

FG:ism

 APPROVED / NOT APPROVED

C. H. Huckelberry
County Administrator

 5/23/18
Date

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

**CONTRACT FOR THE PROVISION OF WATER
DISTRIBUTION SERVICES IN REMOTE AREAS OF PIMA COUNTY**

THIS CONTRACT is entered into between Pima County, a body politic and corporate of the State of Arizona ("County") and Humane Borders, Inc., a nonprofit corporation in the State of Arizona ("Contractor").

RECITALS

- A. A.R.S. § 11-251.02 authorizes the Board of Supervisors to use county resources in search or rescue operations involving the life or health of any person.
- B. The Sonoran Desert which spans Pima County and Southern Arizona is among the hottest places on earth from June to September.
- C. Without sufficient water, the extreme heat can lead to dehydration and other serious health consequences, including death.
- D. Rainfall in the Sonoran Desert is rare and the relative humidity is low. Even without the extreme heat of the summer months, health complications from dehydration and exposure can, and do, occur.
- E. The Pima County Sheriff's Department and the Medical Examiner routinely deal with the deaths of people attempting to migrate by foot across the Sonoran Desert.
- F. The Board of Supervisors finds that provision of a system of water stations throughout the Sonoran Desert saves people from adverse health consequences and death due to dehydration and exposure and reduces the need for aggressive search and rescue operations.
- G. Contractor is qualified and willing to provide such services.
- H. Pursuant to Pima County Code 11.12.060, emergency procurement of services is authorized when there exists a threat to public health, welfare, property or safety.

NOW, THEREFORE, the parties hereto agree as follows:

1. TERM AND EXTENSION/RENEWAL

- 1.1. This Contract, as awarded by the Pima County Board of Supervisors, commences on July 1, 2018 and terminates on June 30, 2019, unless sooner terminated or further extended pursuant to the provisions of this Contract. The parties may renew this Contract for up to four (4) additional one-year periods or any portion thereof.
- 1.2. Any modification or extension of the contract termination date will be by formal written amendment executed by the parties hereto.
- 1.3. Amendments to the Contract must be approved by the Board of Supervisors before any work or deliveries under the Amendment commences.

2. SCOPE

- 2.1. Contractor will:
 - 2.1.1. Identify appropriate locations for water stations, in consultation with local, state and federal authorities;
 - 2.1.2. Install and maintain water stations at identified and approved sites including proper disposal of used water containers and clean up and disposal of trash that accumulates at water station sites;

- 2.1.3. Transport, deliver and install at its own cost potable water at each water station at, to the extent possible, intervals and in quantities sufficient to assure a constant supply of water; and
- 2.1.4. Print and distribute information brochures in English and Spanish.
- 2.2. Contractor will perform the work in accordance with the terms of this Contract and to the best of Contractor's ability.

3. PAYMENT

- 3.1. In consideration of the services specified in this Contract, County agrees to pay Contractor one lump sum payment of **\$30,000.00**. Payment will be made from the Pima County General Fund.
- 3.2. Contractor must submit an invoice for payment to County on or before December 29, 2018.
- 3.3. Payment term is net 30 from date of invoice.

4. INSURANCE

- 4.1. The Insurance Requirements herein are minimum requirements and the County in no way warrants that the minimum requirements are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.
- 4.2. Contractor must obtain and maintain at its own expense, until all contractual obligations have been discharged, the following insurance requirements, coverages, and policy limits:
 - 4.2.1. Commercial General Liability (CGL) - Occurrence Form with limits of \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy shall include bodily injury, property damage, personal/advertising injury and products – completed operations. Pima County is to be named as the additional insured of all operations performed within the scope of this Contract.
 - 4.2.2. Business Automobile Liability (Auto) – Coverage for Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract with a Combined Single Limit (CSL) of \$1,000,000 each accident; and
 - 4.2.3. Workers' Compensation (WC) and Employers' Liability Insurance (ELI) – Arizona Statutory WC requirements and ELI coverage of \$1,000,000 policy limits, each accident and each person - disease.
- 4.3. Additional Insured: By Additional Insured endorsement, the CGL and Auto Policies shall include Pima County, its officers, employees and agents as additional insureds with respect to liability arising out of activities performed by or on behalf of the Contractor.
- 4.4. Subrogation: The CGL, Auto and Workers' Compensation Policies shall each contain a waiver of subrogation endorsement in favor of Pima County, its officers, employees and agents for losses arising from work performed by or on behalf of the Contractor.
- 4.5. Primary Insurance: The Contractor's policies shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by Pima County, its officers, employees and agents shall be excess and not contributory insurance. Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

- 4.6. Cancellation Notice: Each Required Insurance policy must provide, and certificates specify, that County will receive not less than thirty (30) days advance written notice of any policy cancellation, except 10-days prior notice is sufficient when the cancellation is for non-payment of a premium.
- 4.7. Verification of Coverage: Contractor shall furnish Pima County with certificates of insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates. Neither the County's failure to obtain a required insurance certificate or endorsement, the County's failure to object to a non-complying insurance certificate or endorsement, or the County's receipt of any other information from the Contractor, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.

5. INDEMNIFICATION

- 5.1. Contractor will indemnify, defend, and hold harmless County, its officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of any act, omission, fault or negligence by the Contractor, its agents, employees or anyone under its direction or control or on its behalf in connection with performance of this Contract.
- 5.2. Contractor warrants that all products and services provided under this Contract are non-infringing. Contractor will indemnify, defend and hold County harmless from any claim or infringement arising from services provided under this Contract or from the provision, license, transfer or use for their intended purpose of any products provided under this Contract.

6.0 COMPLIANCE WITH LAWS

- 6.1 Contractor will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Contract. The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this Contract, and any disputes hereunder.
- 6.2 Any action relating to this Contract must be brought in a court of the State of Arizona in Pima County.
- 6.3 Any changes in the governing laws, rules, and regulations during the terms of this Contract will apply, but do not require an amendment.

7.0 INDEPENDENT CONTRACTOR

The status of the Contractor shall be that of an independent contractor. Neither Contractor, nor any of Contractor's officers, agents or employees shall be considered an employee of Pima County or be entitled to receive any employment-related fringe benefits under the Pima County Merit System. Contractor will be responsible for payment of all federal, state and local taxes associated with the compensation received pursuant to this Contract and shall indemnify and hold County harmless from any and all liability which County may incur because of Contractor's failure to pay such taxes. Contractor will be solely responsible for program development and operation.

8.0 SUBCONTRACTORS

- 8.1 Contractor will not enter into any subcontracts for any services to be performed under this Contract without County's prior written approval of the subcontract. Contractor must follow applicable Federal, State, and County rules for obtaining subcontractor services. Prior written approval will not be required for the purchase of supplies that are necessary and incidental to Contractor's performance under this Contract.

8.2 Contractor will be fully responsible for all acts and omissions of any subcontractor and of persons directly or indirectly employed by any subcontractor and of persons for whose acts any of them may be liable to the same extent that the Contractor is responsible for the acts and omissions of persons directly employed by it. Nothing in this Contract will create any obligation on the part of County to pay or see to the payment of any money due any subcontractor, except as may be required by law.

9.0 ASSIGNMENT

Contractor will not assign its duties, rights and obligations under this Contract, in whole or in part, without prior written approval of County. Approval may be withheld at the sole discretion of County, provided that such approval shall not be unreasonably withheld.

10.0 NON-DISCRIMINATION

10.1 Contractor agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 **including flow down of all provisions and requirements to any subcontractors.**

10.2 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.

11.0 AMERICANS WITH DISABILITIES ACT

Contractor must 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.

12.0 AUTHORITY TO CONTRACT

12.1 Contractor 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 shall not be liable to Contractor or any third party by reason of such determination or by reason of this Contract.

12.2 Nothing in the provisions of 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 different from the standard of care imposed by law.

13.0 FULL AND COMPLETE PERFORMANCE

The failure of either party to insist on one or more instances upon the full and complete performance with any of the terms or conditions of this Contract to be performed on the part of the other, or to take any action permitted as a result thereof, will not be construed as 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 at any time will not be construed as an accord and satisfaction.

14.0 CANCELLATION FOR CONFLICT OF INTEREST

This Contract is subject to cancellation for conflict of interest pursuant to ARS § 38-511, the pertinent provisions of which are incorporated into this Contract by reference.

15.0 TERMINATION

- 15.1 County reserves the right to terminate this Contract at any time and without cause by serving upon Contractor 30 days advance written notice of such intent to terminate. In the event of such termination, the County's only obligation to Contractor will be payment for services rendered prior to the date of termination.
- 15.2 This Contract may be terminated at any time without advance notice and without further obligation to the County when Contractor is found by County to be in default of any provision of this Contract. If, after termination for default, it is determined that Contractor was not in default the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of County.
- 15.3 Notwithstanding any other provision in this Contract, this Contract may be terminated if for any reason, there are not sufficient appropriated and available monies for the purpose of maintaining County or other public entity obligations under this Contract. In the event of such termination, County will have no further obligation to Contractor, other than to pay for services rendered prior to termination.
- 15.4 The rights and remedies of County in this Section are cumulative and in addition to any other rights and remedies provided by law or under this Contract.

16.0 NOTICE

Any notice required or permitted to be given under this Contract must be in writing and must be served by personal delivery or by certified mail upon the other party as follows:

COUNTY:

Jan Leshner, Chief Deputy County Administrator
Pima County Administration
130 W. Congress Street, 10th Floor
Tucson, AZ 85701

CONTRACTOR:

Dinah Bear, Chair/President
Humane Borders, Inc.
P.O. Box 27024
Tucson, AZ 85726

17.0 NON-EXCLUSIVE AGREEMENT

Contractor understands that this Contract is nonexclusive and is for the sole convenience of County. County reserves the right to obtain like services from other sources for any reason.

18.0 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 will be cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.

19.0 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.

20.0 BOOKS AND RECORDS

- 20.1 Contractor will keep and maintain proper and complete books, records and accounts, which will be open at all reasonable times for inspection and audit by duly authorized representatives of County.

20.2 Contractor must retain all records, supporting documents, statistical records, and all other records relating to this Contract for a period of five (5) years after this Contract is terminated or cancelled or until any related-pending proceeding or litigation has been closed, whichever date is later.

21.0 PUBLIC INFORMATION

21.1 Pursuant to Arizona Public Records law, A.R.S. § 39-121 et seq., documents submitted by Contractor to County may be considered public records and may be subject to release to any member of the public. Records subject to release may include, but are not limited to: pricing, product or program specifications, work plans, and any supporting data.

21.2 In the event that County receives a public records request pursuant to A.R.S. § 39-121 et seq. for documents Contractor submitted to County, County will notify Contractor on the same day the request is made or as soon as possible thereafter.

21.3 County will release Contractor's records ten (10) business days after the date of notice to the Contractor, unless Contractor has secured a protective order, injunctive relief or other appropriate order from a court of competent jurisdiction, enjoining the release of the records. For the purposes of this paragraph, the day of the request for release will not be counted in the time calculation.

21.4 County will not, under any circumstances, be responsible for securing a protective order or other relief enjoining the release of records submitted to County by Contractor nor shall County be in any way financially responsible for any costs associated with securing such an order.

22.0 LEGAL ARIZONA WORKERS ACT COMPLIANCE

22.1 Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Contractor's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Contractor must ensure that each subcontractor who performs any work for Contractor under this Contract likewise complies with the State and Federal Immigration Laws.

22.2 County has the right at any time to inspect the books and records of Contractor and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

22.3 Any breach of Contractor's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Contract subjecting Contractor to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Contractor will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, (subject to COUNTY approval if MWBE preferences apply) as soon as possible so as not to delay project completion.

22.4 Contractor will advise each subcontractor of County's rights, and the subcontractor's obligations, under this Article 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 COUNTY 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.”

22.5 Any additional costs attributable directly or indirectly to remedial action under this Section 22 shall be the responsibility of Contractor. In the event that remedial action under this Section 22 results in delay to one or more tasks on the critical path of Contractor's approved construction or critical milestones schedule, such period of delay will be deemed excusable delay for which Contractor will be entitled to an extension of time, but not costs.

23.0 ISRAEL BOYCOTT CERTIFICATION

Contractor hereby certifies that is not currently engaged in, and will not for the duration of this Contract engage in, a boycott of Israel as defined by A.R.S. § 35-393.01. Violation of this certification by Contractor may result in action by the County up to and including termination of this Contract.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

24.0 ENTIRE AGREEMENT

24.1 This document constitutes the entire agreement between the parties pertaining to the subject matter hereof.

24.2 No verbal agreements or conversations with any officer, agent or employee of County prior to or after the execution of this Contract will affect or modify any of the terms or obligations contained in any documents comprising this Contract. Any such verbal agreement is unofficial information and in no way binding upon County and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded.

IN WITNESS THEREOF, the parties have affixed their signatures to this Contract on the date written below.

PIMA COUNTY:

CONTRACTOR: Humane Borders, Inc.

Chairman, Board of Supervisors

David Bear
Signature

Date: _____

Dinah Bear, Chair, Humane Borders
Printed Name and Title

Date: May 25, 2018

ATTEST:

Clerk of the Board

Date: _____

APPROVED AS TO CONTENT:

Jan Leshner
Jan Leshner
Chief Deputy County Administrator

Date: 5-23-2018

APPROVED AS TO FORM:

Karen S. Friar
Karen S. Friar, Deputy County Attorney