



Contract Number: CT-CED-14000000000000000522  
Effective Date : 7-1-14  
Term Date : 6-30-15  
Cost : \$22,500.00  
Revenue : \_\_\_\_\_  
Total : \_\_\_\_\_ NTE: \_\_\_\_\_  
Action  
Renewal By : 4-1-15  
Term : 6-30-15  
Reviewed by: SR

**BOARD OF SUPERVISORS AGENDA ITEM SUMMARY**

Requested Board Meeting Date: July 1, 2014

**ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:**

We are requesting approval of a Contract with Humane Borders, Inc., for the provision of water distribution services in remote areas of Pima County for \$22,500.00 for fiscal year 2014-2015 and funding shall be from the Pima County Board of Supervisor's Contingency Fund.

CONTRACT NUMBER (If applicable): 14\*522

**STAFF RECOMMENDATION(S):**

Recommend approval of Contract with Humane Borders, Inc.

CORPORATE HEADQUARTERS: Tucson, Arizona – Pima County, Arizona

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COB: 6-18-14  
BOS: 7-1-14

7 pgs (i) se  
Vend- 1  
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CLERK OF BOARD USE ONLY: BOS MTG. \_\_\_\_\_

ITEM NO. \_\_\_\_\_

PIMA COUNTY COST: \$22,500.00 and/or REVENUE TO PIMA COUNTY: \$

FUNDING SOURCE(S): Pima County Board of Supervisors Contingency Fund  
(i.e. General Fund, State Grant Fund, Federal Fund, Stadium D. Fund, etc.)

**Advertised Public Hearing:**

		YES	X	NO
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**Board of Supervisors District:**

1		2		3		4		5		All	x
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**IMPACT:**

**IF APPROVED:**

Humane Borders, Inc. will provide water stations and potable water to various remote desert locations in Pima County to reduce the need for aggressive search and rescue operations.

**IF DENIED:**

Pima County will miss the opportunity to have Humane Borders, Inc., provide water stations and potable water to various remote desert locations in Pima County to reduce the need for aggressive search and rescue operations.

DEPARTMENT NAME: Community & Economic Development Administration

CONTACT PERSON: Celina Cuaron for Hank Atha TELEPHONE NO.: 724-8228



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;
  4. Purchase, laminate and deliver area maps to be placed at each water station; and,
  5. Print and distribute information brochures in English and Spanish.
- B. CONTRACTOR shall perform the work in accordance with the terms of the contract and to the best of CONTRACTOR'S ability.

### ARTICLE III – PAYMENT

- A. In consideration of the services specified in this Contract, COUNTY agrees to pay CONTRACTOR one payment of \$22,500.00 upon receipt of an invoice from CONTRACTOR which must be submitted on or before December 31, 2014.
- B. Total Payment by COUNTY to CONTRACTOR under this Contract **shall not exceed \$22,500.00** and shall be paid from Pima County Board of Supervisors Contingency Funds.

### ARTICLE IV - INSURANCE

- A. CONTRACTOR shall obtain and maintain at its own expense, during the entire term of this Contract the following type(s) and amounts of insurance:
  1. Commercial General Liability in the amount of \$1,000,000.00 combined, single limit Bodily Injury and Property Damage. Pima County is to be named as an additional insured for all operations performed within the scope of the Agreement between Pima County and Contractor;
  2. Commercial or Business automobile liability coverage for owned, non-owned and hired vehicles used in the performance of this Agreement with limits in the amount of \$1,000,000.00 combined single limit or \$1,000,000.00 Bodily Injury, \$1,000,000.00 Property Damage;
  3. If this Agreement involves professional services, professional liability insurance in the amount of \$1,000,000.00; and,
  4. If required by law, workers' compensation coverage including employees' liability coverage.
- B. CONTRACTOR shall provide COUNTY with current certificates of insurance. All certificates of insurance must provide for guaranteed thirty (30) days written notice of cancellation, non-renewal or material change.

### ARTICLE V – INDEMNIFICATION

- A. CONTRACTOR shall 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.
  - B. 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 of
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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.

#### **ARTICLE VI – COMPLIANCE WITH LAWS**

CONTRACTOR shall 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 performances of this Contract, and any disputes hereunder. Any actions relating to this Contract shall be brought in a court of the State of Arizona in Pima County. Any changes in the governing laws, rules, and regulations during the terms of this Contract shall apply, but do not require an amendment.

#### **ARTICLE VII – INDEPENDENT CONTRACTOR**

The status of the CONTRACTOR shall be that of an independent contractor. Neither CONTRACTOR, nor 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 shall 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 shall be solely responsible for Program development and operation.

#### **ARTICLE VIII – SUBCONTRACTOR**

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 for persons directly employed by it. Nothing in this Contract shall create any obligations 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.

#### **ARTICLE IX – ASSIGNMENT**

CONTRACTOR shall not assign its rights to this Contract, in whole or in part, without prior written approval of the COUNTY. Approval may be withheld at the sole discretion of COUNTY, provided that such approval shall not be unreasonably withheld.

#### **ARTICLE X – NONDISCRIMINATION**

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. Executive Order 2009-09 supersedes Executive order 99-4 and amends Executive order 75-5 and may be viewed and downloaded at the Governor of the State of Arizona's website [http://www.azgovernor.gov/dms/upload/EO\\_2009\\_09.pdf](http://www.azgovernor.gov/dms/upload/EO_2009_09.pdf). These provisions are incorporated into and made a part of this Contract as if set forth in full herein. During the performance of this contract, CONTRACTOR shall 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.

**ARTICLE XI – AMERICANS WITH DISABILITIES ACT**

CONTRACTOR 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.

**ARTICLE XII – AUTHORITY TO CONTRACT**

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.

**ARTICLE XIII – 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 actions permitted as a result thereof, shall 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 conditions, either in the past or in the future. The acceptance by either party of sums less than may be due and owing in at any time shall not be construed as an accord and satisfaction.

**ARTICLE XIV – 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.

**ARTICLE XV - NOTICE**

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

**COUNTY:**

Mr. Hank Atha  
Deputy County Administrator  
Pima County Administration  
130 West Congress Street, 10<sup>th</sup> Floor  
Tucson, AZ 85701  
(520) 724-3992 direct  
(520) 724-8171 fax

**CONTRACTOR:**

Ms. Juanita Molina  
Executive Director  
Humane Borders  
P.O. Box 27024  
Tucson, AZ 85726  
(520) 398-5053 direct  
(520) 398-4744 fax

**ARTICLE XVI – 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 shall be cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.

## ARTICLE XVII- PUBLIC INFORMATION

- A. Pursuant to A.R.S. § 39-121 et seq., all information regarding this agreement is subject to release and/or review by the general public including competitors.
- B. Any records that CONTRACTOR believes constitute proprietary, trade secret or otherwise confidential information must be appropriately and prominently marked as CONFIDENTIAL by CONTRACTOR.
- C. Notwithstanding the above provisions, in the event records marked CONFIDENTIAL are requested for public release pursuant to A.R.S. § 39-121 et seq., COUNTY shall release records marked CONFIDENTIAL ten (10) business days after the date of notice to the CONTRACTOR of the request for release, unless CONTRACTOR has, within the ten day period, 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 shall not be counted in the time calculation. CONTRACTOR shall be notified of any request for such release on the same day of the request for public release or as soon thereafter as practicable.
- D. COUNTY shall not, under any circumstances, be responsible for securing a protective order or other relief enjoining the release of records marked CONFIDENTIAL, nor shall COUNTY be in any way financially responsible for any costs associated with securing such an order.

## ARTICLE XVIII – LEGAL ARIZONA WORKERS ACT COMPLIANCE

- A. 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 shall further ensure that each subcontractor who performs any work for CONTRACTOR under this contract likewise complies with the State and Federal Immigration Laws.
- B. COUNTY shall have 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.
- C. 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 shall 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, as soon as possible so as not to delay project completion.
- D. CONTRACTOR shall 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."*

- E. Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of CONTRACTOR. In the event that remedial action under this Article 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 shall be deemed excusable delay for which CONTRACTOR shall be entitled to an extension of time, but not costs.

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**ARTICLE XIX – ENTIRE AGREEMENT**

This document constitutes the entire agreement between the parties pertaining to this subject matter hereof, and all prior or contemporaneous agreements and understanding, oral or written, are thereby superseded and merged herein. This Contract may be modified, amended, altered or extended only by a written amendment signed by the parties.

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

**PIMA COUNTY:**

**CONTRACTOR: Humane Borders, Inc.**

\_\_\_\_\_  
Chair, Board of Supervisors

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Printed Name and Title

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

**ATTEST:**

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

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

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Hank Atha  
Deputy County Administrator

Date: 6-12-14

**APPROVED AS TO FORM:**

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

Date: 6-11-14